



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette

No. 10167

Regulasiekoerant

Vol. 586

Pretoria, 14 April 2014

No. 37509

PART 1 OF 5

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

IMPORTANT NOTICE

The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an "OK" slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender's responsibility to phone and confirm that the documents were received in good order.

Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.

CONTENTS • INHOUD

No.

Page
No. Gazette
No.**GOVERNMENT NOTICES****Labour, Department of***Government Notices*

R. 251	Labour Relations Act, 1995: Cancellation of Government Notices: National Bargaining Council for the Clothing Manufacturing Industry: Main Collective Agreement	3	37509
R. 252	do.: National Bargaining Council for the Clothing Manufacturing Industry: Extension of Collective Agreement to non-parties	4	37509

GOVERNMENT NOTICES

DEPARTMENT OF LABOUR

No. R. 251

14 April 2014

LABOUR RELATIONS ACT, 1995

CANCELLATION OF GOVERNMENT NOTICES

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY: MAIN COLLECTIVE AGREEMENT

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby, in terms of section 32(7) of the Labour Relations Act, 1995, cancel Government Notices No. R.1220 of 24 December 2010, R.761 and R.762 of 14 September 2012, R.278 and R.279 of 12 April 2013 with effect from.....~~2013-04-14~~.....**2014-04-14**.....


MINISTER OF LABOUR
 18/03/2014

No. R. 251

14 April 2014

UMNYANGO WEZABASEBENZI

UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995

UKUHOXISWA KWEZIVUMELWANO ZIKAHULUMENI

UMKHANDLU KAZWELONKE WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI EMBONINI YOKUKHIQIZWA KWEZIMPAHLA ZOKWEMBATHA

Mina, **MILDRED NELISIWE OLIPHANT**, uNgqongqoshe WezabaSebenzi ngokwesigaba 32(7) soMthetho Wobudlelwano KwezabaSebenzi ka-1995 ngihoxisa iZaziso zikaHulumeni ezinguNombolo R.1220 womhlaka 24 kuZibandlela 2010, R.761 kanye no R.762 womhlaka 14 kuMandulo 2012, R.278 kanye no R.279 womhlaka 12 kuNdasa 2013 kusukela mhlaka.....~~2013-04-14~~.....**2014-04-14**.....


GQONGQOSHE WEZABASEBENZI
 18/03/2014

No. R. 252

14 April 2014

LABOUR RELATIONS ACT, 1995**NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING
INDUSTRY: EXTENSION OF COLLECTIVE AGREEMENT TO NON-PARTIES**

I, **MILDRED NELISIWE OLIPHANT**, Minister of Labour, hereby in terms of section 32(2), read with section 32(5)(a) and (b) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the **National Bargaining Council for the Clothing Manufacturing Industry**, 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 **2014-04-14** and for the period ending 31 August 2017.


MINISTER OF LABOUR
18/03/2014

No. R. 252

14 April 2014

UMNYANGO WEZABASEBENZI

UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA-1995

UMKHANDLU KAZWELONKE WOKUXOXISANA PHAKATHI

KWABAQASHI NABASEBENZI EMBONINI YOKUKHIQIZWA

KWEZIMPAHLA ZOKWEMBATHA: UKWELULWA KWESIVUMELWANO

SABAQASHI NABASEBENZI SELULELWA KULABO ABANGEYONA

INGXENYE YESIVUMELWANO

Mina, **MILDRED NELISIWE OLIPHANT**, uNgqongqoshe WezabaSebenzi, ngokwesigaba-32(2) sifundwa nesigaba 32(5) soMthetho Wobudlelwano KwezabaSebenzi ka-1995, ngimemezela ukuthi isiVumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa uMkhandlu Kazwelonke Wokuxoxisana phakathi Kwabaqashi Nabasebenzi Embonini Yokukhiqizwa Kwezimpahla Zokwembatha, futhi ngokwesigaba 31 soMthetho Wobudlelwano kwezabaSebenzi, ka 1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyoMboni, kusukela mhlaka.....**2014-04-14**.....kuze kube ngu 31 kuNcwaba 2017.

Theophilus
UNGQONGQOSHE/WEZABASEBENZI
18/03/2014

PART A:

**CONSOLIDATED
AGREEMENT
FOR THE
EASTERN CAPE
REGION**

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY**NATIONAL MAIN COLLECTIVE AGREEMENT**

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

Cape Clothing Association

Coastal Clothing Manufacturers' Association

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

¹*South African Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' 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 National Bargaining Council for the
Clothing Manufacturing Industry.

¹ *This Employer association has not signed the 2013/2014 Party-to-Party Agreement, however, remains an Employer Party to the Bargaining Council and, hence, is reflected on this page.

1. SCOPE OF APPLICATION

The terms of this Agreement shall be observed in the Clothing Manufacturing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

Part A Provisions for the Eastern Cape Region

Part B Provisions for the Free State and Northern Cape Region

Part C Provisions for the KwaZulu-Natal Region

Part D Provisions for the Northern Region (Clothing)

Part E Provisions for the Northern Region (Knitting)

Part F Provisions for the Western Cape Region (Clothing)

Part G Provisions for the Western Cape Region (Country Areas)

Part H Provisions for the Western Cape Region (Knitting)

Part I Provisions for the Non-Metro Areas

by the employers and employees in the Clothing Industry who are members of the employers' organisations and the trade union, respectively.

2. PERIOD OF OPERATION OF THIS AGREEMENT

- (1) This agreement is binding on the parties hereto from 1 September 2013 until 31 August 2017 unless the parties agree otherwise in writing.
- (2) The parties record that they intend to request the Minister of Labour to extend this agreement to non-parties in the Clothing Industry in terms of section 32 of the Labour Relations Act 66 of 1995. The period of operation of this agreement in respect of non-parties will be determined by the Minister.

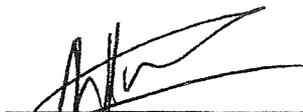
Original Agreement signed at **CAPE TOWN** on behalf of the Parties the **24th day of FEBRUARY 2014**.



FREDA OOSTHUYSEN
Chairperson



MARTHIE RAPHAEL
Vice-Chairperson



SIFISO NDUNA
General Secretary

A - 1

PART A : PROVISIONS FOR THE EASTERN CAPE REGION**1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed in the Clothing Industry-
- (a) by all employers who are members of the employers' organisation and by all employees who are members of the trade union and who are engaged or employed in the said Industry;
- (b) within the Magisterial Districts of-
- (i) Port Elizabeth, including that portion of Hankey which, prior to the publication of Government Notice No. 1515 of 4 October 1963, fell within the Magisterial District of Port Elizabeth, including that portion which was transferred by the publication of Government Notice No. 1687 of 5 September 1975 to Uitenhage and excluding that portion of Hankey which was transferred by Government Notice No. 1974 of 26 September 1980 to Port Elizabeth; and
- (ii) East London, including that portion which was transferred to Mdantsane by Government Notice No. 1481 of 27 August 1971, excluding those portions of the Ciskei that were transferred to East London by Government Notice No. 1877 of 4 September 1981 and Government Notice No. 1079 of 10 June 1988 and including that portion that was transferred to Ciskei by Government Notice No. 2354 of 5 October 1990.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall apply only in respect of employees for whom wages are specified in this part of the Agreement.
- (3) The terms of this part of the Agreement shall not apply to a designer, foreman, factory clerk and supervisor who are remunerated monthly at a rate in excess of the weekly wage specified in this part of the Agreement for such employees, multiplied by four and a third, and whose conditions of employment include the following provisions:
- (a) That his contract of service may not be terminated without a month's notice;
- (b) that his monthly remuneration may not be reduced as a result of short time working, unpaid public holidays or periods of absence through illness, not exceeding 10 working days in any one year of employment and subject to the production of a medical certificate, if required by the employer.
- (4) The terms of this part of the Agreement shall also cover all garment knitting employees and who shall receive the same package labour cost increase as agreed to for all other employees covered by the scope of the Council.
- (5) Clauses 1 (1) (a), 2, 11.1 and 14.6(5) of this part of the Agreement shall not apply to employers and employees who are not members of the employer's organisation and trade union, respectively.
- (6) The Table of Contents of this Part A of the Main Collective Agreement is as follows:

CLAUSE NO.	DESCRIPTION
1.	SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT
2.	PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT
3.	DEFINITIONS
4.	REGISTRATION OF EMPLOYERS
5.	EMPLOYEES
	5.1 Prohibited Employment
	5.2 Proportion or Ratio of Employees

6.	WAGES.....
	6.1 Minimum Wages.....
	6.2 Off-Set Period.....
	6.3 Incremental Dates.....
	6.4 Night Shift.....
	6.5 Long Service Award.....
	6.6 First-Aid.....
	6.7 Payment of Wages.....
	6.8 Deductions.....
	6.9 Overtime Rates.....
	6.10 Incentive bonus scheme and/or conveyor belt system.....
	6.11 Annual Bonus.....
7.	HOURS OF WORK.....
	7.1 Ordinary Hours of Work.....
	7.2 Overtime Hours.....
	7.3 Meal and Other Rest Intervals.....
	7.4 Short-Time.....
8.	LEAVE.....
	8.1 Annual Leave.....
	8.2 Public Holidays.....
	8.3 Maternity Leave.....
	8.4 Compassionate/Paternity Leave.....
	8.5 Sick Leave.....
9.	TERMINATION OF EMPLOYMENT.....
	9.1 Notice Period.....
	9.2 Certificates of Service.....
10.	OUTWORK.....
11.	ORGANISATIONAL RIGHTS.....
	11.1 Closed Shop.....
	11.2 Organisation of Employees.....
	11.3 Shop Stewards.....
	11.4 Negotiated Plant Level Procedures.....
	11.5 Balloting.....
12.	EMPLOYEE BENEFITS.....
	12.1 Supplementary Benefits Fund.....
	12.2 SACTWU Education Bursary Scheme.....
	12.3 Retrenchment Benefit.....
	12.4 SACTWU's HIV/AIDS Project.....
13.	GENERAL EMPLOYER OBLIGATIONS.....
	13.1 Insurance of Wages.....
	13.2 Tools.....
	13.3 Premiums.....
14.	AGREEMENT.....
	14.1 Council Funds.....
	14.2 Exhibition of Agreement.....
	14.3 Agents.....
	14.4 Exemptions.....
	14.5 Existing Contracts.....
	14.6 Disputes Procedure.....
15.	FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION.....
16.	ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING.....
17.	TRADE UNION AGENCY SHOP.....
18.	PRODUCTIVITY (Annexure B).....
19.	INDUSTRY PROTECTION FUND (Annexure C).....
20.	HIV/AIDS (Annexure A).....
21.	CONTRACT EMPLOYEES (Annexure D).....
22.	WORKING IN ARRANGEMENTS.....

2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

3. DEFINITIONS

- (1) Any expressions used in this part of the Agreement, which are defined in the Labour Relations Act, No. 66, 1995, shall have the same meaning as in that Act; any reference in this part of the Agreement to an Act shall include any amendments to such Act; and unless the contrary intention appears, words importing the masculine gender shall also include females, unless inconsistent with the context-

"Act" means the Labour Relations Act No. 66, 1995;

"band-knife cutter" means an employee, other than a cutter-out, engaged in cutting out garments or parts of garments from a 'lay' or 'layers' of material with a band-knife;

"beader" means an employee who is engaged in rolling the open end of dipped gloves to form a bead ring of rubber, and in assisting with coagulant dipping and oven drying or curing operations;

"boiler attendant" means an employee engaged in firing a boiler and maintaining the water level and steam pressure;

"checker in the knitting section" means an employee in the knitting section engaged in checking garments during folding and bagging operations and/or checking unfinished garments or parts of knitted garments for faults;

"chlorinator" means an employee who is engaged in measuring and mixing ingredients for the chlorination (washing) process, and in loading, unloading and operating chlorination equipment in the manufacture of rubber gloves and in transferring gloves to rinse water;

"cleaner" means an employee engaged in dusting or sweeping inside the establishment;

"cleaning" means the removal of spots, marks or foreign matter from materials or garments and/or the removal of threads;

"clerk" means an employee who is engaged in writing, typing or filing or in any other form of clerical work, and includes a cashier, a telephone switchboard operator and an operator of a machine used for accounting and calculating purposes or of a punch card machine, but does not include any other class of employee elsewhere defined in this clause, notwithstanding the fact that clerical work may form part of such employee's work;

"clicker" means an employee who sorts, selects, marks in and subsequently cuts leather garments by means of a clicking knife from leather supplied to him;

"cloakroom attendant" means an employee who is in charge of any change room and/or room in which employees eat and/or any rooms or lockers in which employees store their personal effects and who may in addition supervise the cleaning of such rooms and ablution facilities and shall include any person who is in charge of first-aid;

"Clothing Industry" or "Industry" means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear, nightwear (including pyjamas), outerwear, protective wear (including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties), and underwear.

A. and includes -

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of button-holes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is/(are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with

newly manufactured garments on behalf of such employers and any of their employees;

B. but excludes -

- (a) belts, braces, garters, suspenders and armlets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory.

"complying employer" means an employer which is registered with the Council and which has registered all permanent and contract employees with the Council, and which has given effect to all collective agreements of the Council which are applicable to it in each of its establishments, or which has received exemption from any collective agreement to the extent of such exemption;

"compounder" means an employee who is engaged in the measuring by volume and mass and the mixing of ingredients used in compounds in the manufacture of rubber gloves, and in operation and cleaning of mixing equipment and the drawing of chemicals and ingredients from stores;

"Council", means the Cape Chamber (Eastern Cape sub-chamber) of the National Bargaining Council for the Clothing Manufacturing Industry;

"cutter-out" means an employee engaged in cutting out garments or parts of garments from a "lay" or "layers" of material by electric hand knife or by shears;

"designer" means an employee engaged in designing and/or making patterns;

"despatcher" means an employee who under general supervision is engaged in the making up of orders;

"despatcher, unqualified", means a despatcher who has had less than one year's experience;

"dipper" means an employee who is engaged in dipping formers into compounds in the manufacture of rubber gloves, and in preparing and cleaning equipment, topping up tanks, inspecting compounds, loading drip racks and ovens, loading dipping gantry, operating dipping machines, finger tip control leaching, if applicable, loading and unloading curing ovens, stripping, checking for quality on a dip gauge, checking the thickness and visual appearance of gloves, and filling in reduction figures on a board; and falls into the following categories:

Category A: Small plant/conveyor/nitrile/cut resist dipper;

Category B: Gauntlet tank dipper;

Category C: Electrician's glove dipper;

"establishment" means any place in which any operation in connection with the Clothing Industry is carried on;

"examiner" means an employee, other than a checker in the knitting section, who is engaged in the final examination for quality requirements of finished garments;

"experience" means the total length of all periods of employment in the Industry of an employee in respect of whom wages are specified in this part of the Agreement, and shall be deemed to be continuous from the time the employee enters his employer's service until the time such service is terminated: Provided that an employee whose services are terminated at the end of his employer's working year and who resumes work with his former employer

within 14 days of the re-opening of the employer's factory shall be deemed to have worked continuously;

"factory clerk" means an employee who is engaged in one or more of the following duties or capacities in a garment knitting establishment:

- (a) Calculating piece-work or bonus payments from production schedules;
- (b) checking attendance records or recording particulars of employees at work or absent from work; preparing wage cards or envelopes for subsequent use by another employee;
- (c) checking or recording for production control;
- (d) copying invoices or other documents by machine or hand;
- (e) issuing machine parts, tools, oil and other equipment from workshop store and/or recording same;
- (f) issuing material, lining, canvas, trimming, buttons, cotton and zips to the different departments of an establishment and/or recording same;
- (g) issuing trimming, lining, cotton and zips to employees of an establishment from a substore and/or recording same;
- (h) receiving into stock, goods, material, trimming, tools and other equipment and checking goods received against specifications of goods ordered such as quantity, size and quality;
- (i) recording particulars of materials or general stores consumed or to be consumed or keeping stock records;
- (j) recording particulars of waste;

Provided that a calculator may be used in carrying out one or more of the above duties;

"fitter and/or trimmer" means an employee engaged in fitting and/or trimming a part or parts of garments after they have been marked in by the marker-in, according to the pattern provided by the employer, and cut to shape by the cutter-out;

"football jersey cutter" means an employee who is engaged in marking-in and/or cutting material for football jerseys with any power-driven cutting machine, knife or shears;

"foreman" means an employee who is in charge of the employees including supervisors, in a factory and who exercises control over such employees and who is charged with the responsibility for engaging or terminating the employment of such employees, and who is responsible for the efficient performance by them of their duties;

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

- (a) Cleaning vehicles or machines;
- (b) loading or unloading goods;
- (c) carrying goods or stacking;
- (d) packing goods for despatch or delivery, nailing up packing cases or sewing up bales;
- (e) delivering letters, messages or goods on foot or by means of a foot or hand propelled vehicle;
- (f) making or maintaining fires or removing refuse or ashes;

A - 7

- (g) mixing rubber solutions for rubberised garments;
- (h) fixing machine belts;
- (i) lubricating machines;

"general worker" means an employee engaged on one or more of the following operations:

- (a) Applying adhesive solutions on seams, edges and other parts of clothing and rolling them over with a roller;
- (b) attaching of ornamental trimmings or fasteners by hand or press;
- (c) cutting of aprons;
- (d) fastening permanent turn-ups;
- (e) fastening catch in top of trousers and various odds and ends of sewing by hand;
- (f) fastening edge-stays;
- (g) fastening by hand facings inside already based into position;
- (h) feeding into and taking out of automatic roller or form presses;
- (i) felling bindings;
- (j) felling crutch linings in trousers;
- (k) hemming bottoms by hand;
- (l) folding of garments and/or inserting folded garments into containers;
- (m) ironing open seams during the course of production and ironing loose collars;
- (n) making and sewing on hangers by hand;
- (o) making covered buttons and/or buckles;
- (p) making of the positions for pockets, buttons, loops, fasteners, darts, turn-ups, buttonholes, hems and the like, preparatory to further operations;
- (q) marking and/or trimming of the shapes of the necks of shirts and underwear;
- (r) marking off and/or cutting by hand of any trimming (not being piecegoods) to a given length or shape;
- (s) marking by template and cutting to shape of materials previously cut out;
- (t) nipping by machine or hand;
- (u) pinning of finished garments;
- (v) putting on bridles by hand;
- (w) pulling out bastings;
- (x) sewing buttons by hand;
- (y) soaping;
- (z) sorting out of garments or parts of garments as required for various operations-
- (aa) stamping of sizes, identity or mark numbers or other details on garments and/or the removal of threads;
- (ab) tacking;
- (ac) the removal of spots, marks or foreign matter from materials or garments and/or the removal of threads;
- (ad) touching up of completed garments with a hand iron after they have been pressed by a presser in the infants' end children's section;
- (ae) turning bonnet brims and pressing same;

- (af) turning out or over of the edges of collar facings, belts, cuffs, tabs, pockets and/or flaps by hand or machine, and the turning of garments or parts thereof inside out;
- (ag) turning sleeves or trousers inside out;
- (ah) underpresser;
- (ai) welding plastic clothing;
- (aj) carrying or stacking completed garments which may be in containers or parts of uncompleted garments, the total mass of which shall not be more than 9 kg;
- (ak) packing goods for dispatch or delivery, excluding the making up of orders;
- (al) delivering of messages within the establishment;
- (am) sorting leather for the manufacture of gloves;
- (an) counting components and cut parts used in the manufacture of gloves;
- (ao) rounding out the fingers of gloves that have been turned;
- (ap) turning the cuffs of completed gloves;
- (aq) attaching press-studs;
- (ar) pneumatic wire stitching;
- (as) preparation of leather for the manufacture of gloves, including the pasting thereof;

"glover turner" means an employee who grades patterns from any material to various sizes from a master pattern and according to requirements or directions given to him;

"Grade A employee" means an employee engaged in one or more of the following duties or capacities in a garment knitting establishment:

- (a) **"handyman"** means an employee who makes minor repairs or effects renovations to buildings, fixtures and fittings and who covers ironing and pressing machines or tables with any type of materials;
- (b) **"machine knitter"** means an employee operating one or a set of knitting machines and capable of identifying faults, changing bad needles and making minor adjustments to such items as yarn tensions when necessary;
- (c) **"knitting machine mechanic"** means an employee who is engaged in making repairs or adjustments to machinery or equipment used directly in the manufacture of products of an establishment;

"Grade B employee" means an employee engaged in one or more of the following duties or capacities in a garment knitting establishment:

- (a) assistant to handyman;
- (b) **"chaser"** means an employee who searches and locates garments or orders in an establishment and who may organise orders through the establishment;
- (c) **"cook"** means an employee engaged in preparing meals and cooking;
- (d) **"design room assistant"** means an employee who assists employees in the design room in one or more of the following duties or capacities:
 - (i) Fetching or taking patterns, garments, parts of garments, cotton, cloth or trimmings to and from the different departments in the establishment;

A - 9

- (ii) cutting out patterns after they have been marked out by pattern makers or pattern graders;
- (iii) stamping identification details such as size, style and season on cut out patterns;
- (e) **"knitter's assistant"** means an employee who brings yarn to and from the machines, removes fabric from the machines, unloads and reloads yarn onto the machine and can stop and start a machine, all under the general supervision of a knitter;
- (f) **"knitting machine hand operator"** means an employee who operates a hand operated knitting machine;
- (g) **"knitting shaper"** means an employee who cuts semi-fashioned garments (body or sleeve blanks) individually or collectively;
- (h) **"laboratory assistant"** means an employee who prepares samples and who make initial and routine tests and record the results thereof;
- (i) **"linker"** means an employee engaged in operating a linking machine;
- (j) **"mender"** means an employee who examines knitted garments, other than berets, for defects and rectifies such defects;
- (k) **"NES (Knitting)"** means an employee employed at a Garment Knitting establishment, in a capacity not elsewhere specified in this part of the Agreement;

"Grade C employee" means an employee engaged in one or more of the following duties or capacities in a garment knitting establishment:

- (a) **"bobbin-winder"** means an employee engaged in winding bobbins;
- (b) draw-thread operator;
- (c) drawn-thread mender;
- (d) hand sewer;
- (e) **"label printer"** means an employee engaged in printing or writing labels;
- (f) **"line feeder"** means an employee engaged in feeding and/or collecting work, garments, parts of garments, cotton, trimmings, cartons, boxes and labels on the line or in a department of an establishment;
- (g) sock trimmer;
- (h) toe-closing by machine;
- (i) **"turner"** means an employee engaged in turning garments or parts of garments;
- (j) **"winder"** means an employee engaged in operating a yarn winding machine;
- (k) zip machine operator;
- (l) **"fringe threader"** means an employee threading and knotting strands of thread into ends of scarves and trimming the fringe after threading;

"grader" means an employee who grades patterns from any material to various sizes from a master pattern and according to requirements or directions given to him;

"hourly wage" means the total weekly wage divided by 42;

"instructor" means an employee who is responsible for training employees in any garment knitting establishment or who in any manner whatsoever assists an employer in or about a factory in carrying out training programmes to improve the productivity of his employees;

"layer-up" means an employee engaged in laying material preparatory to cutting, and/or dusting with powder through perforated patterns, and/or bundling parts of garments, and/or spraying of outlines on pre-laid patterns, and/or the placing of carbon sheets on a lay, and/or tracing patterns, and/or making carbon copies or machine duplicated copies of pre-marked lays;

"learner" means, in the case of an employee referred to in subclause 6.1 (1) (b), (c), (h) and (v), an employee who has had **less than four (4) years and four (4) months** experience; in the case of an employee referred to in subclause 6.1 (1) (d), (f), (j)(b) and (p), an employee who has had **less than two (2) years and four (4) months** experience; in the case of an employee referred to in subclause 6.1 (1) (g) and (o), an employee who has had **less than one (1) year and ten (10) months** experience; in the case of an employee referred to in subclause 6.1 (1) (j)(a) and (m), an employee who has **less than one (1) year and six (6) months** experience; in the case of an employee referred to in subclause 6.1 (1) (n), an employee who has **less than one (1) year's experience** and in the case of an employee referred to in subclause 6.1 (1) (i), (k) and (l), an employee who has had **less than six (6) months** experience;

"level B compliance" refers to the status of non-compliant employers who bring themselves within the provisions of clause 14.6(8). For so long as such employers abide by all the conditions set out therein, no writs of execution in respect of non-compliance will be enforced against them, and they will be entitled to Level B Compliance Certificates from the Council;

"machine serviceman" means an employee engaged in adjusting and/or maintaining machines and boilers in good repair;

"machinist" means an employee who performs any operation by sewing and/or linking and/or cuff seaming machines and/or mechanical stapling machines and includes the operation of a mechanical and/or hydraulic cutting press in the glove making section and a tailor;

"marking" means the marking of the position of the pockets, buttons, button-holes, loops, fasteners, darts, hems, turn-ups and the like preparatory to further operations;

"marker-in" means an employee engaged in marking in or chalking around outlines of garments or lays of garments from patterns provided by the employer and who may cut out garments or lay-ups of garments by electric, hand or band-knife or by shears;

"motor vehicle driver" means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition driving a motor vehicle includes all periods of driving and any time spent by the driver on work connected with the motor vehicle or the load on all periods during which he is obliged to remain at his post in readiness to drive;

"mouldmaker" means an employee who is engaged in the making of mould by mixing ingredients and pouring resultant paste into or onto formers in the manufacture of gloves;

"National Council", means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of the Act;

"NES (Clothing)" means an employee employed at a Clothing establishment, in a capacity not elsewhere specified in this part of the Agreement;

"night shift worker" means an employee who is required to work his normal shift between the hours of 22h00 and 06h00 on any day;

"normal shift worker" means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

"**occupier**" means the person having the general management and control of the workshop, and if there are two or more such persons, includes all such persons;

"**packer**" means an employee who is engaged in counting and packing finished products in the glove-making section of the Clothing Industry, and in checking beads, size, overall length, pinholes, thickness and appearance, affixing labels where applicable, and packing into plastic bags and/or containers;

"**pattern grader**" means an employee at a garment knitting establishment who grades patterns to various sizes and makes ancillary patterns to a master pattern and includes an employee engaged in making master patterns for pleating process;

"**pattern maker**" means an employee at a garment knitting establishment engaged in designing and/or making master patterns;

"**part-time driver of a motor vehicle**" means an employee who is ordinarily engaged on duties other than driving a motor vehicle but who on more than two days in any week is engaged in driving a motor vehicle for not more than three hours in total on any such day, and for the purposes of this definition driving a motor vehicle includes all periods of driving and any time spent by the driver while in charge of the vehicle or on work connected with the vehicle or the load;

"**paternity**" means any event connected to the birth or adoption of a child parented by an eligible employee.

"**piece-work**" means any system by which remuneration is calculated by quantity or output of work done;

"**plainsewer**" means an employee engaged in performing one or more of the following operations by hand:

- (a) Felling linings or seams already basted into position;
- (b) felling necks, shoulders or arm-holes;
- (c) fellin waistband linings or parts thereof;

"**premiums**" means without in any way limiting the ordinary meaning of the term, any consideration of whatever nature given in return of the training of an employee.

"**presser**" means an employee engaged in pressing completed garments by hand or machine;

"**progress examiner**" means an employee, other than a checker in the knitting section, engaged in examination for quality requirements of parts of or components of or uncompleted garments;

"**qualified**" means, in the case of an employee referred to in subclause 6.1 (1) (b), (c), (h) and (v), an employee who has had **not less than four (4) years and four (4) months** experience; in the case of an employee referred to in subclause 6.1 (1) (d), (f) (j)(b) and (p), an employee who has had **not less than two (2) years and four (4) months** experience; in the case of an employee referred to in subclause 6.1 (1) (g) and (o), an employee who has had **not less than one (1) year and ten (10) months** experience; in the case of an employee referred to in subclause 6.1 (1) (j)(a) and (m), an employee who has **not less than one (1) year and six (6) months** experience; in the case of an employee referred to in subclause 6.1 (1) (n), an employee who has **not less than one (1) year's** experience and in the case of an employee referred to in subclause 6.1 (1) (i), (k) and (l), an employee who has had **not less than six (6) months** experience.

"**quality control inspector**" means an employee who is engaged in the final examination for quality requirements of finished rubber gloves, and in checking pH, temperature, specific gravity and viscosity, testing dip plate tensile strengths of compounds, conducting an electrical test on finished gloves and completing records;

"quality product co-ordinator" means an employee who is engaged in classifying, sorting, inspecting and packing products in the glove-making section of the Clothing Industry;

"short-time" means a temporary reduction in the number of ordinary hours of work owing to slackness of trade, shortage of supplies, or a breakdown of plant or machinery or break-down or threatened breakdown of buildings;

"specialised presser" means an employee engaged in pressing all jackets being part of ladies' and gents' suits: Provided that where high grade overcoats are manufactured at any establishment, the Council may, after due consideration, require that any employees pressing such garments be included under this definition;

"steam box pleater" means an employee engaged on one or more of the following duties

- (a) putting material between two paper looms (formers) and preparing for steambox in hand or loom pleating process;
- (b) putting prepared formers in steambox and taking them out again in hand or loom pleating process;
- (c) taking material out of looms in hand or loom pleating process;
- (d) guiding material with paper through automatic pleating machine;

"supervisor" means an employee who under general supervision is responsible for the efficient performance of the duties of the employees or a section of the employees in a factory;

"tailor" means an employee engaged in all hand or machine operations relating to the production of men's outerwear, excluding the operations referred to in the definition of "plain sewer";

"tea maker" means an employee engaged in making tea or similar beverages and who may wash cups, saucers and kitchen utensils and who may be responsible for cleaning the kitchen and/or rest rooms;

"temporary employee" means an employee who is employed for a fixed period of not exceeding six months to replace an employee on confinement leave;

"traveller's driver" means an employee at a garment knitting establishment accompanying the traveller on his journey and assisting the traveller in driving and in packing, unpacking and displaying samples;

"twilight shift" means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

"twilight shift worker" means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

"underpresser" means an employee, other than a presser, engaged in pressing processes during the course of manufacture;

"unladen mass" means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue licences in respect of motor vehicles: Provided that in the case of a two or three-wheeled motor cycle, motor scooter or auto-cycle or a cycle fitted with an auxiliary engine, with an engine capacity exceeding 50 cm, the unladen mass shall be deemed not to exceed 453 kg;

"wage" means the amount payable in terms of subclause 6.1 of this part of the Agreement in respect of the ordinary hours laid down in terms of subclause 7.1: Provided that-

- (i) if an employer regularly pays an employee an amount higher than the basic wage

A - 13

as specified in subclause 6.1 in respect of such ordinary hours, it shall mean such higher amount;

- (ii) the first proviso shall not be construed so as to refer to or include any remuneration which an employee who is employed on any basis provided for in subclause 6.10 received over and above the amount which he would have received if he had not been employed on such a basis;

"watchman" means an employee engaged in guarding premises or property;

"workshop" means any premises in which one or more employees are engaged in operations in the Industry;

- (2) For the purposes of this part of the Agreement an employee shall be deemed to be in that class in which he is wholly or mainly engaged.

4. REGISTRATION OF EMPLOYERS

- (1) Every employer engaged in the Industry and to whom this part of the Agreement applies, shall ensure that he is registered with the Council within one month from the date of commencement of operations.
- (2) Where an employer is not yet registered under a previous Agreement, he shall do so within one month after this part of the Agreement comes into operation, or after he becomes engaged as an employer in the Industry.
- (3) The employer shall notify the Secretary of the Council, in writing, of the address of the premises, the names of the partners of the concern, or if a limited liability company, the names of the Secretary and directors.
- (4) The Secretary of the Council shall issue a signed registration certificate.

5. EMPLOYEES

5.1 Prohibited employment

No employer shall require or permit any person under the age of 15 years to work in the Industry.

5.2 Proportion or ratio of employees

- (1) One qualified employee shall be employed by an employer before a reamer may be employed by him and the number of learners employed by him shall not exceed three times the number of qualified employees employed by him.

For the purposes of this subclause, a learner receiving not less than the remuneration of a qualified employee may be deemed to be a qualified employee.

- (2) One qualified marker-in shall be employed by an employer before a layer-up may be employed. Whenever any vacancy for a marker-in occurs in any establishment, the employer shall fill the vacancy from among the cutters-out in his employ provided such employee is suitable.
- (3) One qualified presser shall be employed by an employer before an employee may be employed on-
 - (a) the touching-up of completed garments with a hand iron; (b) underpressing.

6. WAGES

6.1 Minimum wages

- (1) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees employed at clothing establishments, shall be as set out hereunder:

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Wage per week from 1 Sep 2013 - 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Wage per week from 1 Sep 2013 - 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
(a)	Foreman	1484.50	1187.50	1492.00	1193.50
(b)	Designer:				
	(i) Qualified:	1893.00	1514.50	1902.00	1521.50
	(ii) Learners:				
	first six months of experience	645.50	516.50	648.50	519.00
	second six months of experience	752.00	601.50	755.00	604.00
	third six months of experience	900.50	720.50	904.50	723.50
	fourth six months of experience	1002.50	802.00	1007.50	806.00
	fifth six months of experience	1115.00	892.00	1121.00	897.00
	sixth six months of experience	1209.50	967.50	1215.00	972.00
	seventh six months of experience	1316.00	1053.00	1323.00	1058.50
	eighth six months of experience	1422.00	1137.50	1429.00	1143.00
	next four months of experience	1509.00	1207.00	1515.00	1212.00
	Thereafter, the wage specified in (b)(i) i.e.	1893.00	1514.50	1902.00	1521.50
(c)	Grader:				
	(i) Qualified:	1360.00	1088.00	1365.50	1092.50
	(ii) Learners:				
	first six months of experience	640.00	512.00	643.00	514.50
	second six months of experience	696.00	557.00	699.00	559.00
	third six months of experience	757.00	605.50	761.50	609.00
	fourth six months of experience	794.00	635.00	797.00	637.50
	fifth six months of experience	917.50	734.00	922.00	737.50
	sixth six months of experience	982.50	786.00	987.50	790.00
	seventh six months of experience	1036.50	829.00	1041.50	833.00
	eighth six months of experience	1089.50	871.50	1094.00	875.00
	next four months of experience	1159.00	927.00	1164.50	931.50
	Thereafter, the wage specified in (c)(i) i.e.	1360.00	1088.00	1365.50	1092.50
(d)	Marker-in:				

A - 15

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Wage per week from 1 Sep 2013 - 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Wage per week from 1 Sep 2013 - 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
(i)	Qualified:	1036.50	829.00	1041.50	833.00
(ii)	Learners:				
	first six months of experience	640.00	512.00	643.00	514.50
	second six months of experience	685.00	548.00	689.00	551.00
	third six months of experience	731.50	585.00	735.00	588.00
	fourth six months of experience	780.00	624.00	783.00	626.50
	next four months of experience	871.50	697.00	876.00	701.00
	Thereafter, the wage specified in (d)(i) i.e.	1036.50	829.00	1041.50	833.00
(e)	Band-knife cutter:				
	Qualified	1036.50	829.00	1041.50	833.00
	Note: Subject to the availability of a band knife, only a qualified cutter-out shall progress to this class of employee				
(f)	Cutter-out:				
(i)	Qualified:	916.50	733.00	920.50	736.50
(ii)	Learners:				
	first six months of experience	640.00	512.00	643.00	514.50
	second six months of experience	671.00	537.00	673.50	539.00
	third six months of experience	692.50	554.00	695.00	556.00
	fourth six months of experience	717.50	574.00	720.00	576.00
	next four months of experience	748.00	598.50	752.00	601.50
	Thereafter, the wage specified in (f)(i) i.e.	916.50	733.00	920.50	736.50
(g)	Layer-up:				
(i)	Qualified:	718.00	574.50	721.00	577.00
(ii)	Learners:				
	first six months of experience	640.00	512.00	643.00	514.50
	second six months of experience	654.50	523.50	657.00	525.50
	third six months of experience	665.00	532.00	669.00	535.00
	fourth six months of experience	675.00	540.00	679.00	543.00
	Thereafter, the wage specified in (g)(i) i.e.	718.00	574.50	721.00	577.00
(h)	Specialised presser:				
(i)	Qualified:	999.00	799.00	1004.50	803.50
(ii)	Learners:				
	first six months of experience	640.00	512.00	643.00	514.50

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Wage per week from 1 Sep 2013 - 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Wage per week from 1 Sep 2013 - 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	second six months of experience	666.00	533.00	670.00	536.00
	third six months of experience	690.00	552.00	693.50	555.00
	fourth six months of experience	717.50	574.00	720.00	576.00
	fifth six months of experience	746.50	597.00	749.00	599.00
	sixth six months of experience	771.50	617.00	774.00	619.00
	seventh six months of experience	843.00	674.50	848.00	678.50
	eighth six months of experience	874.00	699.00	878.00	702.50
	next four months of experience	893.50	715.00	897.00	717.50
	Thereafter, the wage specified in (h)(i) i.e.	999.00	799.00	1004.50	803.50
(i)	Examiner:				
	(i) Qualified:	856.00	685.00	858.50	687.00
	(ii) Learners:				
	first six months of experience	717.50	574.00	720.00	576.00
	Thereafter, the wage specified in (i)(i) i.e.	856.00	685.00	858.50	687.00
(j)(a)	Machinist:				
	(i) Qualified:	839.00	671.00	842.00	673.50
	(ii) Learners:				
	first six months of experience	640.00	512.00	643.00	514.50
	second six months of experience	655.00	524.00	657.50	526.00
	third six months of experience	674.00	539.00	678.00	542.50
	Thereafter, the wage specified in (j)(i) i.e.	839.00	671.00	842.00	673.50
(j)(b)	Presser, trimmer, factory clerk, embroidery machinist and cloak room attendant:				
	(i) Qualified:	839.00	671.00	842.00	673.50
	(ii) Learners:				
	first six months of experience	640.00	512.00	643.00	514.50
	second six months of experience	655.00	524.00	657.50	526.00
	third six months of experience	674.00	539.00	678.00	542.50
	fourth six months of experience	697.50	558.00	700.00	560.00
	next four months of experience	715.50	572.50	718.50	575.00
	Thereafter, the wage specified in (j)(i) i.e.	839.00	671.00	842.00	673.50
(k)	Progress examiner:				
	(i) Qualified:	848.00	678.50	851.50	681.00
	(ii) Learners:				

A - 17

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Wage per week from 1 Sep 2013 - 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Wage per week from 1 Sep 2013 - 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	first six months of experience	672.50	538.00	674.50	539.50
	Thereafter, the wage specified in (k)(i) i.e.	848.00	678.50	851.50	681.00
(l)	Despatcher:				
	(i) Qualified:	803.00	642.50	806.00	645.00
	(ii) Learners:				
	first six months of experience	678.00	542.50	680.50	544.50
	Thereafter, the wage specified in (l)(i) i.e.	803.00	642.50	806.00	645.00
(m)	Checker in the Knitting section:				
	(i) Qualified:	713.00	570.50	717.00	573.50
	(ii) Learners:				
	first six months of experience	640.00	512.00	643.00	514.50
	second six months of experience	654.50	523.50	657.00	525.50
	third six months of experience	671.00	537.00	673.50	539.00
	Thereafter, the wage specified in (m)(i) i.e.	713.00	570.50	717.00	573.50
(n)	General Worker:				
	(i) Qualified:	692.00	553.50	694.50	555.50
	(ii) Learners:				
	first six months of experience	640.00	512.00	643.00	514.50
	second six months of experience	654.50	523.50	657.00	525.50
	Thereafter, the wage specified in (n)(i) i.e.	692.00	553.50	694.50	555.50
(o)	Steambox pleater:				
	(i) Qualified:	815.50	652.50	819.00	655.00
	(ii) Learners:				
	first six months of experience	640.00	512.00	643.00	514.50
	second six months of experience	669.50	535.50	672.50	538.00
	third six months of experience	690.00	552.00	693.50	555.00
	fourth six months of experience	717.00	573.50	719.50	575.50
	Thereafter, the wage specified in (o)(i) i.e.	815.50	652.50	819.00	655.00
(p)	Plain sewer:				
	(i) Qualified:	717.00	573.50	719.50	575.50
	(ii) Learners:				

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Wage per week from 1 Sep 2013 - 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Wage per week from 1 Sep 2013 - 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	first six months of experience	640.00	512.00	643.00	514.50
	second six months of experience	647.50	518.00	650.00	520.00
	third six months of experience	655.00	524.00	657.50	526.00
	fourth six months of experience	665.00	532.00	669.00	535.00
	next four months of experience	678.00	542.50	680.50	544.50
	Thereafter, the wage specified in (p)(i) i.e.	717.00	573.50	719.50	575.50
(q)	General assistant	783.00	626.50	787.00	629.50
(r)	Cleaner	697.50	558.00	700.00	560.00
(s)	Tea maker	697.50	558.00	700.00	560.00
(t)	Watchman	848.00	678.50	851.50	681.00
(u)	Motor vehicle driver:				
(i)	(aa) does not exceed 453 kg	845.50	676.50	848.50	679.00
	(ab) exceeds 453 kg but does not exceed 2 722 kg	909.00	727.00	913.00	730.50
	(ac) exceeds 2 722 kg but does not exceed 4 536 kg	1005.50	804.50	1008.50	807.00
	(ad) exceeds 4 536 kg	1175.50	940.50	1182.00	945.50
(ii)	Part-time driver of a motor vehicle	784.00	627.00	787.50	630.00
(v)	Clicker:				
(i)	Qualified:	1372.50	1098.00	1378.50	1103.00
(ii)	Learners:				
	first six months of experience	640.00	512.00	643.00	514.50
	second six months of experience	692.50	554.00	695.00	556.00
	third six months of experience	748.50	599.00	752.50	602.00
	fourth six months of experience	847.00	677.50	849.50	679.50
	fifth six months of experience	910.50	728.50	914.50	731.50
	sixth six months of experience	960.50	768.50	964.00	771.00
	seventh six months of experience	1017.50	814.00	1023.50	819.00
	eighth six months of experience	1072.00	857.50	1076.50	861.00
	next four months of experience	1130.00	904.00	1134.50	907.50
	Thereafter, the wage specified in (v)(i) i.e.	1372.50	1098.00	1378.50	1103.00
(w)	Beader	856.00	685.00	858.50	687.00
(x)	Chlorinator	769.50	615.50	773.00	618.50
(y)	Componder	910.50	728.50	914.50	731.50

A - 19

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Wage per week from 1 Sep 2013 - 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Wage per week from 1 Sep 2013 - 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
(z)	Dipper				
	(i) Qualified:				
	Category A	910.50	728.50	914.50	731.50
	Category B	931.00	745.00	935.00	748.00
	Category C	961.50	769.00	965.00	772.00
	(ii) Learners:				
	first six months of experience to Category A	693.00	554.50	696.00	557.00
	first six months of experience to Category B	910.50	728.50	914.50	731.50
	first six months of experience to Category C	931.00	745.00	935.00	748.00
(aa)	Glove turner	1104.00	883.00	1109.50	887.50
(ab)	Mouldmaker	875.50	700.50	878.50	703.00
(ac)	Packer	735.00	588.00	738.50	591.00
(ad)	Quality product co-ordinator	1155.00	924.00	1159.50	927.50
(ae)	<p>A supervisor shall be paid the qualified rate applicable to the employees being supervised, plus 33¹/₃ per cent:</p> <p>Provided that-</p> <p>(i) a trainee supervisor shall serve a probationary period not exceeding six months and shall be paid the qualified rate applicable to the employees being supervised, plus 10 per cent;</p> <p>(ii) a trainee supervisor, who is not considered suitable for promotion after completion of the probationary period, shall return to his former position at his former wage.</p>				
<p>NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by 7% Across-the-Board.</p>					

A - 20

- (2) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees employed at Garment Knitting establishments, shall be as follows:

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Based on 42.5 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Based on 42hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Based on 42.5 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Based on 42 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R	R	R	R	R
Part A - Cutting Department									
Pattern Maker									
(a)	Qualified	1602.65	1 282.00	1584.00	1 267.00	1609.30	1 287.50	1590.50	1 272.50
(b)	Learner								
	First year								
	First six months of experience	897.75	718.00	887.00	709.50	901.08	721.00	890.50	712.50
	Second six months of experience	991.33	793.00	979.50	783.50	994.65	795.50	983.00	786.50
	Second year								
	First six months of experience	1084.43	867.50	1071.50	857.00	1089.65	871.50	1077.00	861.50
	Second six months of experience	1184.18	947.50	1170.00	936.00	1190.35	952.50	1176.50	941.00
	Third year								
	First six months of experience	1291.53	1 033.00	1276.50	1 021.00	1296.75	1 037.50	1281.50	1 025.00
	Next four months of experience	1394.13	1 115.50	1377.50	1 102.00	1400.30	1 120.00	1384.00	1 107.00
	Thereafter, the wage specified in (a), i.e.	1602.65	1 282.00	1584.00	1 267.00	1609.30	1 287.50	1590.50	1 272.50
Pattern Grader									
(a)	Qualified	1292.95	1 034.50	1277.50	1 022.00	1298.18	1 038.50	1283.00	1 026.50
(b)	Learner								
	First year								
	First six months of experience	844.08	675.50	834.00	667.00	848.83	679.00	839.00	671.00
	Second six months of experience	897.75	718.00	887.00	709.50	901.08	721.00	890.50	712.50
	Second year								
	First six months of experience	950.48	760.50	939.50	751.50	955.70	764.50	944.50	755.50
	Second six months of experience	1018.40	814.50	1006.50	805.00	1023.15	818.50	1011.00	809.00
	Third year								
	First six months of experience	1084.43	867.50	1071.50	857.00	1089.65	871.50	1077.00	861.50
	Next four months of experience	1154.73	924.00	1141.00	913.00	1160.43	928.50	1147.00	917.50
	Thereafter, the wage specified in (a), i.e.	1292.95	1 034.50	1277.50	1 022.00	1298.18	1 038.50	1283.00	1 026.50
Football Jersey Cutter									

A - 21

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Based on 42.5 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Based on 42hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Based on 42.5 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Based on 42 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R	R	R	R	R
(a)	Qualified	898.70	719.00	888.00	710.50	902.50	722.00	892.00	713.50
(b)	Learner								
	First year								
	First six months of experience	674.50	539.50	666.50	533.00	677.35	542.00	669.50	535.50
	Second six months of experience	714.88	572.00	706.50	565.00	718.20	574.50	710.00	568.00
	Second year								
	First six months of experience	752.88	602.50	744.00	595.00	756.20	605.00	747.50	598.00
	Second six months of experience	792.30	634.00	783.00	626.50	796.58	637.50	787.00	629.50
	Third year								
	First four months of experience	831.73	665.50	822.00	657.50	834.58	667.50	825.00	660.00
	Thereafter, the wage specified in (a), i.e.	898.70	719.00	888.00	710.50	902.50	722.00	892.00	713.50
Layer-up									
(a)	Qualified	774.73	620.00	765.50	612.50	778.05	622.50	769.00	615.00
(b)	Learner								
	First year								
	First six months of experience	652.65	522.00	645.00	516.00	655.03	524.00	647.50	518.00
	Second six months of experience	674.50	539.50	666.50	533.00	677.35	542.00	669.50	535.50
	Second year								
	First six months of experience	704.90	564.00	696.50	557.00	708.23	566.50	700.00	560.00
	Thereafter, the wage specified in (a), i.e.	774.73	620.00	765.50	612.50	778.05	622.50	769.00	615.00
Part B - Factory Operatives									
Grade A employee									
(a)	Qualified	991.33	793.00	979.50	783.50	994.65	795.50	983.00	786.50
(b)	Learner								
	First year								
	First six months of experience	697.30	558.00	689.00	551.00	700.15	560.00	692.00	553.50
	Second six months of experience	751.93	601.50	743.00	594.50	754.78	604.00	746.00	597.00
	Second year								
	First six months of experience	803.23	642.50	794.00	635.00	806.08	645.00	796.50	637.00
	Second six months of experience	844.08	675.50	834.00	667.00	848.83	679.00	839.00	671.00
	Third year								
	First four months of	898.70	719.00	888.00	710.50	902.50	722.00	892.00	713.50

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Based on 42.5 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Based on 42hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Based on 42.5 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Based on 42 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R	R	R	R	R
	experience								
	Thereafter, the wage specified in (a), i.e.	991.33	793.00	979.50	783.50	994.65	795.50	983.00	786.50
Grade B employee									
(a)	Qualified	846.93	677.50	837.00	669.50	850.73	680.50	840.50	672.50
	Learner								
	First year								
	First six months of experience	686.85	549.50	679.00	543.00	690.65	552.50	682.50	546.00
	Second six months of experience	723.43	578.50	715.00	572.00	725.80	580.50	717.50	574.00
	Second year								
	First six months of experience	759.53	607.50	750.50	600.50	762.85	610.50	754.00	603.00
	Thereafter, the wage specified in (a), i.e.	846.93	677.50	837.00	669.50	850.73	680.50	840.50	672.50
(c)	If advanced to Grade A employee:								
	First six months from date of advancement	846.93	677.50	837.00	669.50	850.73	680.50	840.50	672.50
	Second six months from date of advancement	871.63	697.50	861.50	689.00	875.90	700.50	865.50	692.50
	Third six months from date of advancement	898.70	719.00	888.00	710.50	902.50	722.00	892.00	713.50
	Thereafter, the wage specified for a qualified Grade A employee, i.e.	991.33	793.00	979.50	783.50	994.65	795.50	983.00	786.50
Grade C employee									
(a)	Qualified	751.93	601.50	743.00	594.50	754.78	604.00	746.00	597.00
(b)	Learner								
	First year								
	First six months of experience	673.55	539.00	665.50	532.50	676.40	541.00	668.50	535.00
	Second six months of experience	692.55	554.00	684.50	547.50	695.88	556.50	687.50	550.00
	Thereafter, the wage specified in (a), i.e.	751.93	601.50	743.00	594.50	754.78	604.00	746.00	597.00
(c)	If advanced to Grade B employee:								
	First six months from date of advancement	751.93	601.50	743.00	594.50	754.78	604.00	746.00	597.00
	Second six months from date of advancement	759.53	607.50	750.50	600.50	762.85	610.50	754.00	603.00
	Thereafter, the wage specified for a	846.93	677.50	837.00	669.50	850.73	680.50	840.50	672.50

A - 23

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Based on 42.5 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Based on 42hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Based on 42.5 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Based on 42 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R	R	R	R	R
	qualified Grade B employee, i.e.								
Part C - Clerical Employees									
Clerk									
	Qualified	1091.08	873.00	1078.00	862.50	1096.78	877.50	1084.00	867.00
(b)	Learner								
	First year	805.13	644.00	795.50	636.50	808.45	647.00	799.00	639.00
	Second year	875.43	700.50	865.00	692.00	879.70	704.00	869.50	695.50
	Third year								
	First four months of experience	956.65	765.50	945.50	756.50	960.45	768.50	949.00	759.00
	Thereafter, the wage specified in (a), i.e.	1091.08	873.00	1078.00	862.50	1096.78	877.50	1084.00	867.00
Factory Clerk									
(a)	Qualified	819.38	655.50	809.50	647.50	823.65	659.00	814.00	651.00
(b)	Learner								
	First year	652.65	522.00	645.00	516.00	655.03	524.00	647.50	518.00
	Second year	694.93	556.00	686.50	549.00	698.25	558.50	690.00	552.00
	Third year								
	First four months of experience	751.93	601.50	743.00	594.50	754.78	604.00	746.00	597.00
	Thereafter, the wage specified in (a), i.e.	819.38	655.50	809.50	647.50	823.65	659.00	814.00	651.00
Part D - General									
	Boiler attendant	777.58	622.00	768.50	615.00	781.38	625.00	772.00	617.50
	Despatch packer	803.23	642.50	794.00	635.00	806.08	645.00	796.50	637.00
	General Worker	751.93	601.50	743.00	594.50	754.78	604.00	746.00	597.00
	Labourer	759.53	607.50	750.50	600.50	762.85	610.50	754.00	603.00
Motor vehicle driver of a vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle -									
(a)	does not exceed 1 360 kg	803.23	642.50	794.00	635.00	806.08	645.00	796.50	637.00
(b)	exceeds 1 360 but not 2 720 kg	833.63	667.00	824.00	659.00	837.43	670.00	827.50	662.00
(c)	exceeds 2 720 kg	950.48	760.50	939.50	751.50	955.70	764.50	944.50	755.50
	Supervisor, quality controller and instructor	1018.40	814.50	1006.50	805.00	1023.15	818.50	1011.00	809.00
	Traveller's driver	833.63	667.00	824.00	659.00	837.43	670.00	827.50	662.00

DESCRIPTION	GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Based on 42.5 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme) Based on 42hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Based on 42.5 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme) Based on 42 hrs per week	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
	R	R	R	R	R	R	R	R
Watchman or caretaker, whose ordinary hours of work are -								
(a) less than 60 hours per week	866.40	693.00	856.00	685.00	870.68	696.50	860.50	688.50
(b) 60 hours per week	909.15	727.50	898.50	719.00	913.90	731.00	903.00	722.50
NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage in line with this schedule.								

(3) New Employees

3.1 New employees shall be paid a weekly wage of 70% of the rate in metro areas, subject to the following provisions:

3.1.1 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a period of 3 years.

3.1.2 The provision is only applicable to compliant companies.

3.1.3(a) The new entry-level wage provision will continue in force and effect as an industry-wide provision after the 31st August 2014 if there has been an increase in employee strength of compliant employers in the industry of at least 15% as at 31st March 2014, monitored on a bi-annual basis.

3.1.3(b) The bi-annual benchmark monitoring shall be measured against the following schedule of new employment growth:

1 March 2012:	3% increase
1 September 2012:	6% increase
1 March 2013:	9% increase
1 September 2013:	12% increase
1 March 2014:	15% increase

3.1.4 It is only applicable to those compliant companies who were in existence and operational as at 1 June 2011.

3.1.5 All other provisions of the main agreement shall be applicable to new employees.

A - 25

- 3.1.6 The closed shop shall be applicable to all new employees.
- 3.1.7(a) The employee strength to determine whether or not there has been an increase in employee strength will be measured by comparing the employee strength of compliant employers whose businesses are registered with the bargaining council on the 1st June 2011, as per clause 3.1.3, and to that of the employee strength of compliant employers whose businesses are registered with the bargaining council on the 31st March 2014, i.e. a period of 30 months following the implementation of this *Agreement*.
- (b) In the event that the employee strength does not increase as per the provisions of this *Agreement* and more specifically, the provisions of *Clause 3.1.3* above, the provisions of the new-entry wage provision will terminate.
- (c) Upon such termination of the application of the new entry level wage provision, the wages of all employees earning the new-entry wage will be increased to the full applicable gazetted wage for all job categories from the first pay week following the 31st August 2014, unless the parties during the 2014/2015 round of annual or other negotiations agree otherwise or agree to an alternative to address any further job losses or the absence of job growth in the industry.
- 3.1.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to employ employees at the rates specified in sub-clause 3.1.3 (a) above.
- 3.1.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 3.1.10 Qualified employees shall be employed at the qualified new entry rate, subject to sub-clause 3.1.1.
- 3.1.11 Effective 1st September 2011, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.

(4) **Incentivised Wage Rates**

The 'new entry wage rates' provisions as specified in clause 4 of the 2011/2012 party-to-party substantive agreement shall be abolished and replaced with the following incentivised wage rates provisions, applicable to new employees only:

- 4.1 With effect 1 September 2012, new employees shall be paid a guaranteed wage of no less than 80% of the normal qualified gazetted wage rate applicable to current employees, subject to the following provisions:
- 4.2 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a minimum

- period of 3 years, unless the applicant employee agrees otherwise with his/her prospective employer.
- 4.3 The guaranteed wage rate as specified in sub-clause 4.1 above shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the qualified rate, provided the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1 September 2012, once a national framework agreement governing the incentive portion has been agreed.
 - 4.4 The provisions of clause 4 of this circular is only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.
 - 4.5 All other provisions of the industry's Main Agreement shall be applicable to new employees.
 - 4.6 The closed shop shall be applicable to all new employees.
 - 4.7 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to re-employ employees at the rates specified in sub-clause 4.1 above
 - 4.8 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
 - 4.9 Qualified employees shall be employed at the qualified rate, subject to sub-clause 4.2.
 - 4.10 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party to party agreement, which was subsequently extended to non-parties and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus the annual increases, and subject to the companies at which they are employed meeting the compliant employment growth targets as set out in the 2011/2012 wage agreement.
 - 4.11 Effective 1st September 2012, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.
 - 4.12 The parties shall negotiate a national framework agreement at national bargaining council level, to give enabling effect to the plant level incentivised wage component as contemplated in sub-clause 4.3 of this agreement. This shall be finalised within a period of 4 months with effect from 1 October 2012 (excluding the annual shutdown period). Thereafter, companies who qualify for the provisions of clause 2 of this agreement and who wish to implement it shall have a 2 month period to conclude plant-level incentive arrangements in terms of the provisions of the national framework agreement.
 - 4.13 The deadlock breaking mechanism for the national framework agreement is either binding interest arbitration or, at the end of the prescribed period,

the entire 80% dispensation falls away, unless other forms of deadlock breaking mechanisms are agreed between the parties.

- 4.14 Should the 80% dispensation fall away in consequence of the provision in sub-clause 4.13 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreement rate.
- 4.15 The deadlock breaking mechanism for operationalising the incentive component at plant level shall consist firstly of a facilitation process by a panel of experts jointly appointed by the employer and trade union parties to this agreement and if not resolved, by an advisory award by the panel, unless other forms of deadlock breaking mechanisms are agreed to between the parties.
- 4.16 The parties agree that the only outstanding issue pertaining to the national incentivised framework agreement is the deadlock breaking mechanism. The Parties agree to finalise this matter within two (2) weeks from the date of signing this agreement, failing which the provision of sub-clause 4.13 above will become effective.

(5) Notwithstanding the definition of "experience" in clause 3-

(a) an employer engaged in one of the following sections of the Industry:

Rainwear section; men's outerwear section; women's outerwear section; men's or women's underwear section; infants' and children's clothing section; workwear section; may when engaged in a qualified machinist whose previous experience was gained in one or more of the other sections specified, pay such machinist for a maximum period of four weeks a commencing wage of one notch below that to which he is entitled and thereafter to progress him according to the learnership scale applicable to machinists: Provided that such machinist shall be paid the wage of a qualified machinist as soon as such machinist is again engaged in the section in which the previous experience was gained.

For the purposes of this subparagraph "workwear section" means that section of the Industry in which boiler-quits, overalls, dustcoats, waiters' jackets and office jackets are manufactured;

(b) when an employee transfer an employee in any category to another category for which a higher wage is specified, he shall pay such employee for the first 26 weeks not less than the wage he was receiving or was entitled to receive in such first-named category and shall thereafter pay him in accordance with the scale of wages for employees in the category to which such employee was transferred commencing at the next highest notch.

6.2 Off-set period

Notwithstanding the wage increases specified in subclause 6.1, an employer may grant to an employee such increases in advance of the specified incremental dates: Provided that if such an increase is granted within three months of the specified incremental date, the employee shall not qualify for a further increase in terms of subclause 6.3 (2).

6.3 Incremental dates

- (1) An employer shall pay increases due to his employees during each calendar year on the following basis:
- (a) All employees who qualify for an increase during the period 1 January to 31 March of the calendar year shall be granted such increases with effect from the pay-week in which 15 February of such year falls.

When an employee is not in employment during the said pay-week he shall become entitled to the increase with effect from the date he is employed.

- (b) Likewise and in the same manner all increases which become due during the periods 1 April to 30 June, 1 July to 30 September and 1 October to 31 December of each calendar year, shall be granted to employees with effect from the pay week in which 15 May, 15 August and 15 November fall within respective periods.
 - (c) In calculating whether an employee qualifies for an increment, all periods of absence from work shall be regarded as employment except any absence without pay for a continuous period in excess of four consecutive pay-weeks and in respect whereof full particulars of the name of the employee and the period of absence have been advised to the Council within 14 days of the employee resuming work.
- (2) Notwithstanding anything to the contrary herein, the wage of an employee, who immediately prior to the date on which this part of the Agreement comes into operation, is in respect of a wage higher than that specified for the class of work on which he is engaged shall, with effect from the date on which this part of the Agreement comes into operation, be increased by an amount equal to the difference between the wage as agreed by the parties as at 1 September 2013 and the wage specified in this part of the Agreement for the class of work on which he is engaged.
 - (3) Nothing in this part of the Agreement shall operate to reduce the wage which was being paid to the employee at any time prior to or at the date of coming into operation of this part of the Agreement.
 - (4) Notwithstanding the fact that the ordinary hours of work in any establishment are less than 42 in any week, the full minimum weekly remuneration shall, save for any deductions permitted under subclauses 6.8 (3) and 7.4 (3) of this part of the Agreement, be paid to each employee.

6.4 Night shift

An employee who is required to work his normal shift between the hours of 22:00 and 06:00 on any day shall be deemed to be on night work, and shall be paid not less than his ordinary wage in respect of the total period so worked plus 10 per cent.

6.5 Long service award

An employee who has not less than three years unbroken service with an employer, shall receive a service award of not less than R2 per week, in addition to the wage payable to an employee in terms of subclause 6.1, irrespective of whether such an employee is, in respect of his ordinary hours of work, in receipt of a wage higher than that specified for an employee of his class.

Notwithstanding anything to the contrary contained in this part of the Agreement, the periods referred to in subclause 8.1 (5), except in the case of confinement or illness, shall, for the purposes of this subclause, be deemed to be unbroken service: Provided that such an employee immediately after such periods of absence, returns to his place of employment: Provided further that, where an employee is absent from employment for maternity reasons or illness, such absence shall be regarded as unbroken service for the purpose of this subclause on condition that such an employee returns to the place of employment within 12 calendar months without having been employed elsewhere. An employer may require such an employee to furnish satisfactory proof of absence from work owing to illness or for maternity reasons prior to the payment of the service award.

6.6 First-aid

Any employee who is in charge of first aid shall, in addition to the wage payable to such employee in terms of subclause 6.1, be paid an additional amount of not less than R6,50.

6.7 Payment of wages

- (1) Wages and all other amounts due to an employee shall be paid in cash weekly on Friday: Provided that where an employee's service does not terminate on the ordinary pay-day of the establishment concerned, any amounts due to him shall be paid immediately upon such termination.
- (2) In the case of a normal shift worker the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during the usual office hours of the establishment, but not later than twenty-four hours after the usual pay day.
- (3) In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.
- (4) Wages and all other amounts due shall be placed in a sealed envelope on which shall be reflected, or shall be accompanied by, a clip or statement showing the name or number of the employee, the date of payment, total deductions made and the net amount of earnings contained therein. Entries on the said envelope or slip shall be made in ink or indelible pencil or shall be a clear carbon copy.

6.8 Deductions

- (1) No deductions of any description shall be made from the amount due to an employee: Provided that-
 - (a) except where otherwise provided in this part of the Agreement whenever an employee is absent from work otherwise than on the instructions or at the request of his employer, a deduction proportionate to the period of his absence and calculated on the basis of the wage which such employee was receiving in respect of his ordinary hours of work at the time thereof;
 - (b) where the employer supplies the employees with tea, he may deduct from the wages of his employees the cost of such tea;
 - (c) with the written consent of an employee, deductions may be made by an employer for contributions to a pension or sick fund or medical scheme;
 - (d) contributions to Council funds shall be deducted in terms of subclause 14.1 of this part of the Agreement;
 - (e) contributions to the Council's Supplementary Benefits Fund and Provident Fund may be deducted;
 - (f) with the written consent of the employee, deductions may be made by an employer for contributions to the funds of the trade union;
 - (g) the cost of scissors supplied to employees may be deducted in terms of subclause 13.2 (2) of this part of the Agreement;
 - (h) if owing to the stoppage of machinery, no work is available for an employee, a pro rata deduction may be made by the employer from the wages of such employee, only for the time lost which is in excess of two hours;
 - (i) any amount paid by an employer, compelled by a statutory law, ordinance or legal process to make payment on behalf of an employee, may be deducted;
 - (j) subject to the provisions of subclause 7.4 (3), a deduction proportionate to the amount of short time worked may be made;

- (k) deductions in terms of subclause 8.2 (4) (b) may be made;
 - (l) with the written consent of the employee, deductions may be made by the employer, up to a maximum of one-sixth of the employee's wage for that week for purchases made from the employer and loans advanced by the employer; Provided that the employee shall not be indebted to the employer for an amount exceeding seven working days' wages at any one time.
- (2) In any establishment where work is performed by employees organised in sets or teams, each employee shall be paid his earnings by the employer in whose establishment the work is performed or by his representative.

6.9 Overtime rates

- (1) (a) Payment for overtime shall be not less than one and a half times the hourly wage for each hour or part of an hour so worked or, in the case of piece work, not less than one and a half times the ordinary rate of wage for all work done during each hour: Provided that-
- (i) an employee who works overtime for less than four hours on a Saturday shall be paid as if he had on that day worked four hours' overtime;
 - (ii) an employee who works overtime for more than four and a quarter hours or after 12:00 on a Saturday shall be paid at the rate of two times the hourly wage for each hour or part of an hour so worked;
- (b) for the purpose of calculating overtime, the hourly wage shall mean the weekly wage divided by 42.
- (2) (a) If an employee works on a Sunday, his employer shall either pay the employee-
- (i) if he so works for a period not exceeding four hours, not less than the ordinary wage payable in respect of the period ordinarily worked by him on a week-day; or
 - (ii) if he so works for a period exceeding four hours, wages in respect of the total period worked on such Sunday or wages which is not less than double his ordinary wage payable in respect of the period ordinary worked by him on a weekday, whichever is the greater; or
- (b) at not less than one and a half times his ordinary rate of wage in respect of the total period worked on such Sunday and the employer shall in addition grant the employee within seven days of such Sunday, one day's leave and pay him in respect thereof, wages at a rate of not less than his ordinary rate of wage as if he had on such holiday worked his average ordinary working hours for that day of the week.
- (3) If overtime calculated on a daily basis differs from that calculated on the weekly basis, the basis more favourable to the employee shall be adopted.
- (4) Subject to the provisions of subclause 7.1 (4), the provisions of this clause shall not apply to a watchman.

6.10 Incentive bonus scheme and/or conveyor belt system

- (1) An incentive bonus scheme and/or conveyor belt system may be introduced in any establishment by mutual agreement between the management, representatives of the trade union and the employees concerned and may be altered only by mutual agreement between these parties. Such schemes may be terminated by either the employer or the trade union giving not less than one week's notice.

A - 31

- (2) Any dispute concerning the introduction or working of any scheme which cannot be settled in the factory by negotiation between the employer, the employees and the trade union official shall be referred to the Council.
- (3) An incentive bonus scheme may be introduced in respect of some of the employees employed in a particular section of an establishment: Provided that it shall be applied within a reasonable period after its commencement to all employees engaged in the production of the particular garment in respect of which the scheme has been introduced.
- (4) Subject to the provisions of subclauses 6.8 (1) and 7.4 (3), such incentive bonus scheme and/or conveyor belt system shall enable an employee to earn at least 10 per cent in excess of the specified wage.
- (5) A copy of the incentive bonus rates and subsequent alterations thereto, agreed upon and duly signed by the employer and the Secretary of the trade union, shall be filed with the Secretary of the Council and the employer shall keep a copy thereof posted in a conspicuous place readily accessible to his employees.
- (6) When an employee is remunerated on an incentive bonus and/or conveyor belt basis, his ordinary rate of wage shall, for the purpose of overtime in terms of clause 8, be calculated as though he were paid by the hour and shall be ascertained at any date by dividing his total earnings, excluding overtime, during the three months immediately preceding that date or during the total period of his employment on an incentive bonus basis by the employer concerned, whichever is the shorter, by the number of hours worked, excluding overtime, during the period in respect of which such earnings were paid.

6.11 Annual bonus

Each employee shall be paid an annual bonus on the day of his employer's annual closure in December of each year, equivalent to 2% of an employee's annual basic prescribed wage (excluding overtime earnings and production bonuses) calculated from 1 January to 31 December and earned with the employer by whom he is employed.

A pro rata share thereof shall be paid to an employee who leaves employment before the 31st of December.

The bonus is inclusive of and not additional to any annual bonus paid by an employer. A shop steward may not be prejudiced in respect of annual bonus earnings for time off authorised by his employer, in attending to union business.

7. HOURS OF WORK

7.1 Ordinary hours of work

- (1) No employer shall require or permit an employee-
 - (a) to work for more than 42 hours, excluding meal times, in any one week, which may however be comprised of either a five or six-day working week; or
 - (b) to work on a Saturday, unless his establishment is working a six-day week;
 - (c) in establishments working a six-day week, to work later than 12:30 on Saturday: Provided that the working hours performed from Monday to 12:30 Saturday (inclusive) do not exceed 42 in all; or
 - (d) to work on a Sunday without the permission of the Council;
 - (e) to work in a five-day week for more than eight and a half hours on any one day: Provided that the working hours performed from Monday to Friday, inclusive, do not exceed 42 in all; or

- (f) to work in a six-day week for more than-
 - (i) eight hours on any one day during the period Monday to Friday, inclusive;
 - (ii) two and a half hours or beyond the hours of 12:30 on a Saturday; or
 - (g) to work before 07:45 or after 18:00 during the period Monday to Friday, inclusive, or before 07:45 on Saturdays.
- (2) For the purposes of subclause 7.1 (1) (a), an employee who does not work on any holiday referred to in subclause 8.1 (2) or who on such holiday works less than his average ordinary working hours for that day of the week in which such holiday falls, shall be deemed to have worked his average ordinary working hours on that day.
- (3) Notwithstanding the provisions of subclause 7.1 (1) (g), an employee engaged on shift work on embroidering or pleating machines may be permitted to commence work earlier than 07:45 but not earlier than 06:00, and the second shift worked on any one day may extend beyond 18:00: Provided that an employee on such shift work shall not be required or permitted to work after 22:00.
- (4) The provisions of this clause shall not apply to a watchman whose hours of work do not in total exceed 72 hours per week and whose employer grants him a day off of 24 consecutive hours in respect of every week of employment: Provided that-
- (i) he makes no deductions from the watchman's wage in respect thereof;
 - (ii) the employer may, in lieu of granting his watchman any such day off, pay such watchman the wage which he would have received if he had not worked on such day, plus an amount of not less than double his daily wage in respect of such day not granted.

7.2 Overtime hours

- (1) Notwithstanding the provisions of subclause 7.1 (1) (a), (b) and (c) of this part of the Agreement, no employer shall require or permit an employee to work overtime-
- (i) for more than two hours on any day, except that an employee who works a five day week may work up to four hours on a Saturday: Provided that 10 hours are not exceeded in such week;
 - (ii) on more than three consecutive days;
 - (iii) on more than 60 days in any year;
 - (iv) after completion of his ordinary working hours, for more than one hour on any day unless he has-
 - (a) provided such employee with an adequate meal before he has to commence overtime; or (b) paid such employee an allowance of not less than R5 in sufficient time to enable the employee to obtain a meal before the overtime is due to commence: Provided that-
 - (aa) an employee shall not be required to work overtime without his consent nor shall he be dismissed or adversely affected in his employment by reason of his refusal to work overtime;
 - (ab) the requirements of paragraph (iv) shall not apply to an employee who works on a Saturday or Sunday.

A - 33

- (2) Notwithstanding the provisions of the first and second provisos to subclause 7.2 (1), where an employer requires an employee to work overtime for more than one and a half hours on any day, such an employer shall provide such employee with an adequate meal before he has to commence overtime, or pay such employee an allowance of not less than R5 in sufficient time to enable the employee to obtain a meal before the overtime is due to commence.
- (3) Notwithstanding the provisions of sub-clause 7.1 (1) (g), an employee may be required or permitted to work overtime before the normal commencement of an establishment: Provided that such overtime shall not commence earlier than 06:45.
- (4) **Twilight Shift**
- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:
- (i) Only unemployed people may be recruited for working this shift.
 - (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
 - (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
- (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
 - (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
 - (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.
- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:
- (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
 - (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

(5) **Aggregation of Overtime**

For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 7.1 of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
 - (ii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
 - (iii) time not worked as a result of the employer having declared short time;
 - (iv) time not worked as a result of the employee being on authorised shop steward stewards time off; and
 - (v) time not worked as a result of any authorised absenteeism.
- (6) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

7.3 Meal and other rest intervals

- (1) No employer shall require or permit an employee-
- (a) to work for a continuous period of more than five hours without an uninterrupted interval of-
 - (i) in the Magisterial District of Port Elizabeth, an interval of 45 minutes;
 - (ii) in all other areas, an interval of one hour;

Provided that for the purpose of this paragraph, periods of work interrupted by shorter intervals than those specified in sub-paragraphs (i) and (ii) shall be deemed to be continuous.

- (2) A rest interval of not less than 15 minutes during which no work shall be performed, shall be allowed to each employee as nearly as practicable to the middle of each morning work period, and a rest interval of 10 minutes shall be allowed to each employee as nearly as practicable to the middle of each afternoon work period. Such intervals shall be reckoned as time worked. Utensils and boiling water for making tea shall be provided by the employer and be available for the employees at the commencement of each rest and lunch interval.

7.4 Short-time

- (1) The employer shall notify and consult with the union at least five days in advance of the intention to work short-time, except where the employer shows that it was impractical to give such notice.
- (2) Where short-time is being worked in any establishment, the work shall be distributed as evenly as possible amongst the employees in each of the sections or departments concerned.
- (3) Where short-time is being or has been introduced in any establishment, employees who are not informed and are present for work on a particular day, shall be employed for at least half a day or be paid a day's wage in lieu thereof. For the purposes of this subclause "day's wage" shall mean the wage usually paid in respect of the hours constituting a fully day's work (i.e. other than the usual short days in the establishment).

8. LEAVE

8.1 Annual leave

- (1) (a) Every employer shall grant to his employees during December in each year:
- (i) in the case of an employee with less than 12 completed months' service with the same employer, two consecutive weeks and four days' leave;

A - 35

- (ii) in the case of an employee with more than 12 completed months' service with the same employer, three consecutive weeks' leave and shall not be paid less than three weeks' wages as annual leave pay;
- (iii) An employee who at the end of a leave cycle or at the date of termination of service, has worked less than 12 completed months during that specific leave cycle, shall be paid a pro rated value of the amount specified in either paragraph 1 (a) (i) or 1 (a) (ii), depending on which is applicable.

Every employee shall be paid not later than the last working day before the commencement of such leave.

- (b) Every employer shall grant to a watchman paid leave of not less than three consecutive weeks to commence during December in each year, and shall be paid not later than the last working day before the commencement of such leave. A watchman who at the end of a leave cycle or at the date of termination of service has worked less than 12 completed months during that specific leave cycle shall be paid an amount on a pro rate basis, depending on the months worked: Provided that-
 - (i) The period of such leave shall not be concurrent with any period during which the employee is under notice of termination of employment.
 - (ii) If any public holiday referred to in subclause 8.2 (1) falls within the period of such leave, such public holiday shall be added to the said period as a further period of leave and the employee shall be paid in respect of such public holiday not later than the first pay-day following resumption of work or on the date of termination of services, whichever is the earlier, an amount equal to the wage would have earned had he on such public holiday worked his daily average ordinary working hours.
- (c) An employer may by agreement with his employees allow for two consecutive weeks' leave, inclusive of public holidays, to be taken in the period of December and January each year with the balance to be taken before the end of June of the following year.

Every employee shall be paid the total wage owed for the periods specified in paragraphs 1 (a) and 1 (b), not later than the last working day before the commencement of such periods of leave.

The terms of any such agreement reached by an employer with his employees shall be referred, for the purposes of the record, to the Council.

- (2) On termination of employment, the employer shall pay the employee the amount of leave allowance due as at the date of such termination, calculated as provided in subclause 8.1 (1): Provided that where an employee is required to forfeit a week's wages in lieu of notice to an employer in terms of the provisions of subclause 9.1 (4) of this part of the Agreement, the leave pay due to such an employee may be used to offset the difference between the wages accrued to the employee and the wage to be forfeited, provided the accrued wages are less than the amount of the wage to be forfeited: Provided further that the amount so forfeited shall not exceed one week's wages.
- (3) Employment for half a month or over shall be reckoned as employment for a full month for the purposes of calculating the leave allowance payable in terms of subclause 8.1 (1) and 8.1 (2). "Half a month" shall mean any period of 15 consecutive calendar days (irrespective of working days).

- (4) The amount of the leave allowance payable in terms of subclauses 8.1 (1) and 8.1 (2) shall be calculated at the rate of remuneration which the employee was receiving immediately prior to the date from which his holiday is granted or on which his employment is terminated, as the case may be, and the provisions of subclause 6.10 (6) shall also apply where work is being done on a piece work basis of remuneration.
- (5) Any period during which an employee-
- (a) is on leave in terms of subclause 8.1 (1); or
 - (b) is absent from work on the instructions or at the request of his employer; or
 - (c) is absent from work owing to illness or confinement; shall be deemed to be employment for the purposes of subclauses 8.1 (1) and (2): Provided that the provisions of paragraph (c) shall not apply in respect of any period of absence owing to illness of more than three consecutive days, if the employee fails, after a request for such a certificate by the employer, to submit to the employer, a certificate from a medical practitioner that he was prevented by illness from doing his work or in respect of that portion of any total period of absence during any 12 months of employment which is in excess of 30 days.
- (6) In this clause the expression "employer" includes-
- (a) in the case of the death of an employer, the executor of his estate or his heir or legatee; and
 - (b) in the insolvency of an employer or the liquidation of his estate, or the transfer or sale of his business, the trustee or liquidator or the new owner of the business;
- If such executor, heir legatee, trustee, liquidator or new owner continues to employ that employee.

8.2 Public holidays

- (1) Public holidays shall be granted in terms of the Public Holidays Act, 1994 (Act No. 36 of 1994):
- (a) New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day, Day of Goodwill and any other day declared to be a public holiday under section 2A of the Public Holidays Act, 1994.
 - (b) All public holidays are on full pay: Provided that-
 - (i) whenever an employee works on any of these days, his employer shall pay him remuneration at a rate of not less than his ordinary remuneration in respect of the total period worked on such day, in addition to the remuneration to which he would have been entitled had he not so worked;
 - (ii) any public holiday shall be exchangeable for any other day which is fixed by agreement or agreed to between an employer and an employee.
 - (iii) Whenever any public holiday falls on a Sunday, the following Monday shall be a public holiday.
 - (c) In the event of any of the public holidays referred to in paragraph (a) of this subclause falling on a Saturday, the employer shall pay to each of his employees, not less than their ordinary wage payable in respect of the period ordinarily worked by his employees on a week day.

A - 37

- (2) No work shall be performed after 13:00 on the day immediately preceding Good Friday and the employees shall be granted the afternoon off and shall receive for such afternoon full pay in respect of the hours normally worked on Thursday afternoons: Provided that where work is performed on such afternoon the employees shall in addition to their ordinary wages be paid at overtime rates for all time worked after 13:00 on that day: Provided further that the provisions of this subclause shall not apply in respect of an employee who is absent from work during the morning work period of the day immediately preceding Good Friday.
- (3)
 - (a) Notwithstanding anything contained in this part of the Agreement, any establishment may be closed for any reason other than short time during any period of work specified for the establishment in terms of subclause 7.1 (1) of this part of the Agreement by mutual arrangement between the employer and not less than 75 per cent of the employees affected by such closing.
 - (b) Whenever an employee is not required to work resultant on the closing of an establishment by mutual arrangement, in terms of paragraph (a), a deduction pro rata to the hours not worked may be made from the amounts payable in terms of this part of the Agreement.
- (4) For the purposes of this subclause, employment shall be deemed to commence from-
 - (a) the date on which the employee entered the employer's service; or
 - (b) the date on which the employee last became entitled to annual leave or absence; whichever may be the later.

8.3 Maternity leave

- (1) Notwithstanding anything to the contrary contained in this part of the Agreement, the provisions of this subclause shall apply only to female employees proceeding on and returning from maternity leave.
- (2) Female employees with not less than one year's service with the same employer shall be entitled to maternity leave for a maximum of six months, subject to the following conditions:
 - (a) The period of absence for maternity leave shall be regarded as unpaid leave;
 - (b) to qualify for such leave an employee shall be required to provide her employer with a proper medical certificate from a medical practitioner at least three months prior to the expected date of confinement, reflecting the expected date of confinement;
 - (c) if an employee intends to work on or before the completion of her maternity leave, she must notify her employer in writing at least two weeks beforehand of such intention.
- (3) The period of absence on maternity leave shall be deemed to be continuous for the purpose of accruing annual leave.
- (4) An employer shall be entitled to replace the service of any employee who is away from work on maternity leave with a temporary employee.
- (5) Where an employee is absent or proceeds on maternity leave during the annual shutdown, such employee shall be entitled to the holiday pay accrued in terms of subclause 8.1 up to the date the maternity leave commenced: Provided that, on re-employment, the employee is paid the difference between the full leave allowance due as prescribed in subclause 8.1 and the accrued holiday pay paid.

8.4 Compassionate/paternity leave

- (1) Compassionate/paternity leave amounting to three days per year shall be granted to an employee as follows:
 - (a) In the event of the death of a close relative. In this regard, "close relative" shall mean spouse, child of an employee, and mother and father of an employee or his spouse;
 - (b) male employees, regardless of marital status, shall be entitled to a maximum of three days' unpaid paternity leave per annum. The employer shall be entitled to require proof of paternity: Provided that no employee shall be entitled to more than three days' compassionate and/or paternity leave per annum.
- (2) Payment for such leave shall not be made by the employer, but from the Supplementary Benefits Fund.

8.5 Sick leave

- (1) Subject to the provisions of subclause 8.5 (2), an employer shall grant to an employee who is absent from work through incapacity, sick leave on full pay amounting to-
 - (a) 20 working days in the case of an employee who works a five-day week;
 - (b) 24 working days in the case of an employee who works a six-day week;in the aggregate during any one year of employment: Provided that the employer may require the employee to provide him with a certificate signed by a registered medical practitioner showing the nature and duration of each period of absence covering more than two consecutive days for which payment is claimed.
- (2) The provisions of subclause 8.5 (1) shall not apply where the employer and his employees participate in a sick or other fund which entitles the employees to receive sick pay, which in the opinion of the Council, amount in the aggregate to not less than that provided in subclause 8.5 (1).
- (3) For the purpose of this subclause, the term "employment" shall have the same meaning as in subclause 8.1 (5).
- (4) "Incapacity" means inability to work owing to any sickness or injury other than sickness or injury caused by an employee's own misconduct: Provided that any such inability to work caused by an accident for which compensation is payable under the Compensation for Occupational Injuries and Disease Act, No. 130 of 1993, shall only be regarded as incapacity during any period in respect of which no disablement payment is payable in terms of that Act.

9. TERMINATION OF EMPLOYMENT

9.1 Notice period

- (1) Whenever an employer or an employee intends terminating a contract of employment, he shall give the other party one week's notice in writing, and such notice shall take effect from the first day of the usual working week of the employee: Provided that this provision shall not apply in the case of an employee engaged on trial for a period of not less than and not exceeding 15 consecutive working days, in which case notice may be given on any working day: Provided

A - 39

further that if any written contract of employment provides for a period of notice of equal duration for both parties which is longer than one week, notice shall in accordance with such contract be given over such longer period.

- (2) Notwithstanding the provisions of subclause 9.1 (1) and provided such a termination of the employment contract takes effect from the first day of the usual working week-
 - (a) an employer may terminate the contract of employment without giving notice to the employee provided, he pays to the employee an amount which is not less than the appropriate wage which he would otherwise have been required to pay the employee had he terminated the contract with the proper notice; and
 - (b) an employee may terminate the contract of employment without giving notice to the employer, provided he pays to the employer an amount which is not less than the appropriate wage which the employer would otherwise have been required to pay him had he terminated the contract with the required notice.
- (3) The provisions of this subclause shall not-
 - (a) affect the right of an employee who is working short-time to terminate the contract of employment without notice;
 - (b) apply during the first four hours of employment of a new employee;
 - (c) affect the right of an employer or employee to terminate the contract of service without notice for any good cause recognised by law as sufficient.
- (4) Notwithstanding anything to the contrary contained in this part of the Agreement-
 - (a) the employment of any employee who absents himself from work for a period of six consecutive working days, without notifying his employer, in writing, of the reason may be terminated after an enquiry has been held on the seventh day, notification of which enquiry shall be given at least 24 hours in advance, and such an employee shall forfeit the employer the equivalent of one week's wages in respect of the week in which he so leaves the services of his employer; and
 - (b) any employee who leaves the service of his employer without notice in terms of subclause 9.1 (1) shall forfeit one week's wages in respect of the week in which he so leaves the service of his employer;

Provided that if the accrued wages due to any such employee is less than the amount of the wages to be forfeited, the difference between the amount of the accrued wages and the wage to be forfeited may be offset against the holiday pay due to such an employee in terms of the provisions of subclause 8.1 (2) of this part of the Agreement.

- (5) No employer shall dismiss any employee by reasons of such employee's absence from work-
 - (a) through illness for a period not more than 60 consecutive days, if the employee has furnished or caused to be furnished to the employer within six consecutive working days after absencing himself from work a medical certificate, certifying that such employee is unable to work due to illness;
 - (b) on leave, the permission of the employer having been obtained.
- (6) An employer employing less than 50 employees may after a period of four weeks temporarily replace the services of an employee who is absent from work in terms of subclause 5 (a) or (b): Provided that the employee on notifying his employer of

his intention to resume work shall be re-engaged after a maximum of one week from the date of such notification.

9.2 Certificates of service

- (1) Every employer shall issue a certificate of service free of charge to each of this employees at the time when he leaves such employer's service. The certificate shall show the employee's full name, address, age, occupation, sex, rate of pay per week at the time of engagement, rate of pay per week at the time of leaving, date of entering service, date of leaving service, date of last increase, and number of certificates which was produced by the employee in terms of subclause 9.2 (3) when entering his employment. All certificates issued by each employer shall be numbered consecutively signed by the employer or his representative, and a duplicate of each certificate shall be retained by him.
- (2) A duplicate copy of each certificate issued in terms of this section shall be forwarded to the Secretary of the Council, P O Box 1142, Woodstock, 7915.
- (3) An employer shall before engaging any applicant for work require such applicant to produce a certificate of service issued in accordance with the provisions of subclause 9.2 (1) or a certificate issued by the Secretary of the Council, specifying the experience the applicant has had, which certificate shall be issued by the Secretary of the Council on request. The employer shall forward to the Secretary of the Council such certificate with the specified engagement form containing the undermentioned particulars not later than one week after the applicant has commenced work. The engagement form shall show the full name of the employee, name of factory, address of employee, occupation, age, sex and rate of pay per week, and shall be signed by the employer.

10. OUTWORK

No employer shall give outwork to be done except in a workshop registered in terms of clause 4 of this part of the Agreement, nor shall he require or permit an employee to perform work in the Industry other than in an establishment which is equipped, maintained and controlled by the employer.

11. ORGANISATIONAL RIGHTS

11.1 Closed Shop

- (1) No employer who is a member of an employers' organisation (which is a party to the Council), shall continue to employ an employee -
 - (a) who, while being eligible for membership of the union, is not a member of the union as at the date of coming into operation of this part of the Agreement; or
 - (b) who does not become a member of the trade union within a period of 90 days from such date.
 - (c) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the union or employers' organisation or who have been refused membership of or expelled from the union or employers' organisation.
- (2) Every employer shall forward all deductions made from the remuneration of employees in respect of union membership fees to the Secretary of the Cape Regional Chamber of the Council, P O Box 1142, Woodstock, 7915, not later than

A - 41

the seventh day of the month following that to which it refers. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers.

- (3) For this part of the Agreement no union membership subscriptions may be -
 - (a) paid to a political party as an affiliation fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.
- (4) Provided that the provisions of this clause will also not be applicable to:
 - (a) clerks; or
 - (b) a casual employee.
- (5) Provided further that the provisions of section 26(3)(c) of the Act shall be observed by the parties to the Council and to whom this clause is applicable.

11.2 Organisation of employees

Every employer shall, provided that 24 hours' notice has been given to the employer or his representative, in writing, permit any person or persons authorised by the trade union and by the Council to enter his establishment during the lunch interval for the purpose of-

- (a) interviewing employees on trade union matters;
- (b) enrolling new members;
- (c) posting and distributing notices issued by the trade union;
- (d) collecting members' contributions to the trade union.

11.3 Shop stewards

- (1) Provided that an outline of each such training course has been lodged with the Bargaining Council, and is available on request to any employer, shop stewards shall be entitled to three days' paid leave per annum per shop steward to attend shop stewards' training courses, if such attendance falls within normal working hours.
- (2) In addition to the leave granted in subclause 11.3 (1) above, shop stewards shall be eligible for and have access to further paid leave to attend to trade union duties. This additional leave shall be calculated at seven days per annum per shop steward. At each establishment, this additional leave shall be pooled and the shop stewards shall be entitled to use the additional leave so pooled to attend to trade union duties in any manner that the trade union deems fit: Provided that in establishments employing five or fewer employees, the trade union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause.
- (3) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

11.4 Negotiated plant level procedures

Every employer shall negotiate at plant level with the union procedures relating to grievances, discipline, retrenchment and the functioning and training of shop stewards.

11.5 Balloting

In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.

12. EMPLOYEE BENEFITS

12.1 Supplementary Benefits Fund

- (1) The Fund established in terms of the Agreement published under Government Notice No. 1724, dated 21 September 1956, known as the Clothing Industry Welfare Fund (in this clause referred to as the "Fund"), is hereby continued.
- (2) The objects of the Fund shall be the provision of financial assistance to employees who-
 - (a) lose earnings as a result of being on short-time in terms of subclause 7.4;
 - (b) lose earnings through being certified unfit for work on account of tuberculosis;
 - (c) require spectacles;
 - (d) are entitled to a grant when proceeding on maternity leave in terms of subclause 8.3;
 - (e) lose earnings as a result of proceeding on compassionate leave/paternity leave in terms of subclause 8.4.
- (3)
 - (a) The employer shall deduct an amount of 60 cents per week from the wages of each employee.
 - (b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of subclause (a) above, contribute an amount of 90 cents per week.
 - (c) The total amount deducted, together with his contribution in terms of subclause (b) above, shall be forwarded by the employer to the Regional Secretary of the Regional Chamber of the Council, not later than the seventh day of the month following that to which it refers, together with a statement in such form as the Council may from time to time specify.
- (4) An employee who has been employed in the Industry for not less than 13 weeks and who has been absent from work on account of short-time, shall be entitled to 50% of his actual daily wage: Provided that no benefits shall be paid to an employee who earns the equivalent of four days' wages in any week, irrespective of the number of days such an employee may work during that week: Provided further that the amount paid to an employee shall not be in excess of 10 days in any period of 12 consecutive calendar months.
- (5) An employee who has been a member of the Fund for 13 weeks, shall be entitled to financial assistance by way of tuberculosis pay at the rate of 50% of his actual wage for a consecutive period of not more than eight weeks commencing on the day the employee, certified to be suffering from tuberculosis by a medical practitioner, ceased work on the instructions of such medical practitioner, or for such lesser period as the medical practitioner may deem it necessary for the employee to remain absent from his place of work due to his contraction of tuberculosis: Provided that-
 - (i) an employee who during any week is absent for a period of less than a full calendar week shall be paid one fifth of the weekly benefit in respect of each day of such absence,

A - 43

- (6) An employee who has been a member of the Fund for 13 weeks and who satisfies the Council that because of defective eyesight, he has had to obtain spectacles, shall be paid an amount of R20 towards the cost thereof: Provided that not more than one such payment shall be made during each cycle of 24 months.
- (7) An employee proceeding on maternity leave in terms of subclause 8.3 shall be entitled to a grant of R500: Provided that-
- (i) only one such grant shall be payable to such employee every three years;
 - (ii) the maximum number of grants payable to such employee shall be three.
- (8) An employee who has been a member of the Fund for 13 weeks and who proceeds on compassionate/ paternity leave in terms of subclause 8.4 shall be entitled to claim leave pay.
- (9) All moneys paid into the Fund shall be deposited in a special account to be opened in the name of the Fund at a bank and/or institution approved by the Council. All payments from the Fund shall be by cheque on the Fund's accounts and such cheques shall be signed by two persons duly authorised thereto by the Council.
- (10) Any moneys regarded by the Council as being surplus to its requirements may be placed on deposit with a bank or registered building society: Provided that sufficient money is kept in such liquid form as will enable the Council to meet its liabilities immediately it is called upon to do so.
- (11) A public accountant shall be appointed by the Council to audit the accounts of the Fund annually and not later than 31 March in each year, and to prepare a statement showing-
- (a) all moneys received-
 - (i) in terms of subclause 12.1 (3) thereof;
 - (ii) from any other source; and
 - (b) expenditure incurred under all headings during the 12 months ended 31 December preceding, together with a statement showing the assets and liabilities of the Fund.
- The audited statements, shall thereafter lie for inspection at the office of the Council and copies thereof shall be sent to the Registrar of Labour Relations, Pretoria, within three months after the closure of the period covered thereby.
- (12) In the event of the expiry of this part of the Agreement through effluxion of time or cessation or through any other cause, the Fund shall continue to be administered by the Council until the Fund is liquidated or transferred to a fund duly constituted for the same purpose for which the original Fund was created: Provided that the Fund shall be liquidated unless an agreement providing for the continuation of the Fund or for the transfer of its moneys as aforesaid, is entered into within one year of the date of expiry of this part of the Agreement.
- (13) In the event of the dissolution of the Council or in the event of its ceasing to function during any period in which this part of the Agreement is binding in terms of section 61 (5) of the Act, the Fund shall continue to be administered by a committee consisting of the members of the Council at the date on which the Council ceases to function or is dissolved: Provided, however, that any vacancy occurring on the Committee may be filled by the Registrar of Labour Relations from employers or employees in the Industry, as the case may be, so as to ensure an equality of employer and employee representatives and of alternates in the

membership of the Committee. In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar of Labour Relations, he may appoint a trustee or trustees to carry out the duties of the Committee and who shall possess all the powers of the Committee for such purposes.

If there is no Council in existence upon the expiry of this part of the Agreement, the Fund shall be liquidated by the Committee or the trustees, as the case may be, in the manner set forth in subclause 12.1 (12) and if upon such expiry the affairs of the Council have already been wound up, and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59 (5) of the Act, as if it formed part of the general funds of the Council.

(14) Upon liquidation of the Fund in terms of subclause 12.1 (12), the moneys remaining to the credit of the Fund after the payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the funds of the Council.

(15) All costs of administration and liquidation of the Fund shall be charge upon the Fund.

12.2 SACTWU Education Bursary Scheme

Every employer to whom this part of the Agreement applies shall pay 31c per week for each trade union party member in his employ to the SACTWU Education Bursary Scheme. The total amount per month shall be paid to the SACTWU Finance Department, P.O. Box 18359, Dalbridge, 4014, by not later than the 15th day of the following month.

12.3 Retrenchment benefit

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, unless the employer has been exempted from the provisions of section 196 (1) of the Act by the Minister.

12.4 SACTWU's HIV/AIDS Project

Every employer to whom this part of the Agreement applies shall contribute an amount of 45 cents per week in respect of each of his employees for whom wages have been specified in this part of the Agreement. The total amount shall be forwarded by the employer to the Secretary of the Council, P.O. Box 1142, Woodstock, 7915, not later than the seventh day of the month following that to which it refers.

13. GENERAL EMPLOYER OBLIGATIONS

13.1 Insurance of wages

Every employer shall within four weeks of the date of publication of this part of the Agreement take out a policy of insurance with a registered insurance company which shall provide for payment to be made to all employees of the employer who are deprived of work, through fire, for the amount of two week's wages: Provided that, should the stoppage of work be for a period of less than two weeks, a pro rata payment may be made. Should it not be possible for the employer to obtain such a policy of insurance, he shall deposit with the Council, an amount equal to two weeks' wages of all employees in the establishment at the date of coming into operation of this part of the Agreement which the Council shall retain in a special trust investments account

until required for a like payment to employees. Any adjustment to the amount held by the Council shall be made within two weeks from the date of an increase or decrease, as the case may be, in the total number of employees employed by the employer.

13.2 Tools

- (1) Every employer may supply scissors to his employees at the price paid therefore by him.
- (2) Where the cost of scissors supplied to an employee does not exceed R1, the employer may deduct the cost thereof from the wages of the employee in instalments of not more than 10c per week. Where the cost of scissors exceeds R1, the deductions shall be at a rate mutually agreed upon between the employer and his employee. The scissors shall be kept sharpened and otherwise in good order by the employer without cost to the employee.

13.3 Premiums

No premiums shall be charged or accepted by an employer 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.

14. AGREEMENT

14.1 Council funds

The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.

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

- (1) An amount equal to 0.23% of each employee's wages per week, calculated at the qualified machinist rate of pay, up to a maximum of R1,97 per week, payable by means of a deduction from the employee's wages for whom wages have been specified in this part of the Agreement.
- (2) An employer shall, in respect of each contributor from whose wages deduction are made in terms of subclause (1) above, contribute an amount equal to 0.33% of each employee's wages per week, calculated at the qualified machinist rate of pay, up to a maximum of R3,16 per week, payable by the employer.
- (3) The total amount deducted, together with his contribution in terms of subclause (2) above, shall be forwarded by the employer to the Regional Secretary of the Regional Chamber of the Council, not later than the seventh day of the month following that to which it refers, together with a statement in such form as the Council may from time to time specify.
- (4)
 - (a) Every employer shall make a return to the Regional Chamber of the number of employees employed by him for each week of each calendar month in the form and manner specified and supplied by the Regional Chamber.
 - (b) Should any amount due in terms of this clause not be received by the Regional Chamber 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 Regional Chamber 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

Regional Chamber: Provided that the Regional Chamber 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 or Regional Chamber 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 pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.

14.2 Exhibition of Agreement

Every employer on whom the Main Collective Agreement is binding must-

- (a) keep a legible copy of the Main Collective Agreement in two official languages available in the workplace at all times;
- (b) keep the copy available for inspection by any employee;
- (c) give a copy of the Main Collective Agreement-
 - (i) to an employee who has paid the specified fee; and
 - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

14.3 Agents

- (1) The Council may request the Minister of Labour to appoint one or more specified persons to be designated agents to assist in enforcing the terms of this part of the Agreement.
- (2) A designated agent may-
 - (a) secure compliance with the Council's collective agreements by:
 - (i) publicising the contents of the agreements;
 - (ii) conducting inspections;
 - (iii) investigating complaints;
 - (iv) investigating means of conciliation;
 - (v) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period; or
 - (b) perform any other function that are conferred or imposed on the agent by the Council.
- (3) A designated agent shall report all disputes concerning compliance with any provision of this part of the Agreement to the General Secretary of the Council and to designated official at the relevant Regional Chamber of the Council.
- (4) Within the registered scope of the Council, a designated agent of the bargaining council shall have all the following powers-
 - (a) A designated agent may, without warrant or notice at any reasonable time,

A - 47

- enter any workplace or any other place where an employer carries on business or keeps employment records that is not a home, in order to monitor or enforce compliance with a collective agreement concluded in the Council.
- (b) A designated agent may only enter a home or any place other than a place referred to in subclause (1):
- (i) with the consent of the owner or occupier; or
 - (ii) if authorised to do so by the Labour Court in terms of subclause (3).
- (c) The Labour Court may issue an authorisation contemplated in subclause (2) (b) only on written application by a designated agent who states under oath or affirmation the reasons for the need to enter a place in order to monitor or enforce compliance with a collective agreement concluded in the Council.
- (d) If it is practicable to do so, the employer and a trade union representative shall be notified that the designated agent is present at a workplace and of the reason for the designated agent's presence.
- (e) In order to monitor or enforce compliance with a collective agreement a designated agent may:
- (i) require a person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on a matter to which a collective agreement relates, and require that disclosure to be under oath or affirmation;
 - (ii) inspect and question a person about any record or document to which a collective agreement relates;
 - (iii) copy any record or document referred to in paragraph (b) or remove these to make copies or extracts;
 - (iv) require a person to produce or deliver to a place specified by the designated agent any record or document referred to in paragraph (b) for inspection;
 - (v) inspect, question a person about, and if necessary remove, an article, substance or machinery present at a place referred to in subclauses (1) and (2);
 - (vi) question a person about any work performed; and
 - (vii) perform any other prescribed function necessary for monitoring or enforcing compliance with a collective agreement.
- (f) A designated agent may be accompanied by an interpreter and any other person reasonably required to assist in conducting an inspection.
- (g) A designated agent shall:
- (i) produce on request a copy of the authorisation referred to in subclause (2) (b);
 - (ii) provide a receipt for any record or document removed in terms of subclause (5) (e); and
 - (iii) return any removed record, document or item within a reasonable time.

- (h) Any person who is questioned by a designated agent in terms of subclause (4) (e) shall answer all questions lawfully put to that person truthfully and to the best of that person's ability.
- (i) An answer by any person to a question by a designated agent in terms of this clause may not be used against that person in any criminal proceedings, except proceedings in respect of a charge of perjury or making a false statement.
- (j) Every employer and every employee shall provide any facility and assistance at a workplace that is reasonably required by a designated agent to effectively perform the designated agent's functions.
- (k) The Council may apply to the Labour Court for an appropriate order against any person who:
 - (i) refuses or fails to answer all questions lawfully put to that person truthfully and to the best of that person's ability;
 - (ii) refuses or fails to comply with any requirement of the designated agent in terms of this clause; or
 - (iii) hinders the designated agent in the performance of the agent's functions in terms of this clause.
- (l) For the purposes of this clause, a collective agreement shall be deemed to include any basic condition of employment which constitutes a term of a contract of employment in terms of section 49 (1) of the Basic Conditions of Employment Act.

14.4. Exemptions

A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
 - (a) the period for which the exemption is sought;
 - (b) the number of employees affected and how many of such employees are members of a registered trade union;
 - (c) the clauses and subclauses of this part of the Agreement from which the exemption is sought;
 - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and

A - 49

- (e) the demonstrable commercial need of the applicant for the exemption sought.
- (4)
- (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
 - (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been refused.
 - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
 - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.
 - (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
 - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
 - (g) If the application has been granted or partially granted, the Exemptions Committee 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 exemption(s) will be valid;
 - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
 - (iv) the full name of the exempt employer or employee(s).
 - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
 - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a

decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.

- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application, may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such fee shall be consistent with-
- (i) the cost incurred for the hearing of the appeal;
- (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall, in addition, have the power to raise a cost order on the applicant in respect of cost incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
- (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
- (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
- (a) There is a demonstrable commercial need for the exemption.
- (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
- (c) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted, result in a conflict with the primary objectives of the Act.
- (d) The exemption will not undermine collective bargaining and labour peace in the industry.
- (e) There has been compliance with subclause (3) above.
- (f) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.

A - 51

- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.
 - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
 - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability.
 - (d) The terms of the exemption sought, including the period thereof.
 - (e) Any existing projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
 - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
 - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
 - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
 - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
 - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour
 - (k) What hardship may eventuate to employees in the event of the exemption being granted.
 - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
 - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An

application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.

(b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.

(10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.

14.5 Existing contracts

Any contract of service in operation at the date of commencement of this part of the Agreement or concluded subsequent to such date shall be subject to the provisions of this part of the Agreement.

14.6 Dispute procedure

(1) Unless otherwise provided in the Council's Constitution or in this part of the Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:

(a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.

(b) The Council shall, from time to time, adopt by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.

(c) When any dispute is allocated to a Regional Chamber in terms of this clause then such Regional Chamber shall have the same rights, powers and obligations as the Council.

(2) Accreditation:

(a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions as appropriate.

(b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

(3) Panel of conciliators, arbitrators and senior arbitrators-

(a) The Council shall appoint:

(i) a panel of conciliators, for the purpose of conciliating disputes;

(ii) a panel of arbitrators, for the purpose of determining disputes;

(iii) a panel of senior arbitrators, for the purpose of determining disputes where:

(aa) the nature of the questions of law raised by the dispute;

A - 53

- (bb) the complexity of the dispute;
 - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
 - (dd) the public interest, requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
 - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall be filled by appointing the nominees most preferred by the shall do likewise.
 - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
 - (iii) In the event of the number of remaining vacancies being an even number, half of the vacancies 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' lists shall 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 General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant 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 arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3) (d) above, the Council may remove a member of the panel of conciliators or arbitrators from office-
 - (i) for serious misconduct; or
 - (ii) owing to incapacity; or
 - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.

- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3) (c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3) (i), a person may be appointed to one or more of the panels of conciliators or arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

(4) Disputes involving non-parties to the Council

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council shall be resolved by the Council in accordance with the following procedure-

(a) Referral and conciliation of disputes:

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought;
- (ii) the party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute;
- (iii) the General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute;
- (iv) the conciliator may, during conciliation proceedings:
 - (aa) mediate the dispute;
 - (bb) conduct a fact-finding exercise; and
 - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.

A - 55

- (vi) At the end of the thirty (30) day period, referred to in subclause (4) (a) (iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

(b) Adjudication of disputes referred to the Council for arbitration:

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:
 - (aa) the Act requires that the dispute be arbitrated; or
 - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) 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 the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4)(b)(v) above has been granted by the arbitrator, shall have the right to:
 - (aa) give evidence;
 - (bb) call witnesses;
 - (cc) question the witnesses of any other party;
 - (dd) address arguments to the arbitrator;
 - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable

sections 139, 140 and 141 of the Act, read with the changes required by the context.

- (viii) Representations at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord; and without limiting the generality thereof, 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;
 - (bb) the award is ambiguous or contains an obvious error or omission;
 - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

(5) Disputes involving parties to the Council

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council, which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to the proviso in subclause (5) (d) below.

A - 57

- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

(6) Compliance procedure and enforcement of collective agreements by Council:

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
 - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber;
 - (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by, the Council, where these exist, by:
 - (aa) publicising the contents of the agreement;
 - (bb) conducting inspections;
 - (cc) investigating complaints;
 - (dd) endeavouring to secure compliance with the agreement through conciliation; or
 - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
 - (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
 - (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
 - (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.

- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclauses (4) (b) (v) to (4) (b) (xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
 - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
 - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
 - (cc) charging a party to the arbitration an arbitration fee;
 - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
 - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
 - (ff) any award contemplated in section 138 (9) of the Act;
 - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of this subclause shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

(7) Non-Compliance

- (a) Outsourcing to non-compliant companies shall not be permitted in the industry.
- (b) The parties shall enter into agreements with all Provincial and Local governments which shall have the effect that their sourcing from the

Industry shall include a requirement to only source from companies which hold a valid Certificate of Compliance from the bargaining council.

(8) Compliance Promotion

- 8.1 All current non-compliant companies which meet a minimum of 80% of the party-to-party *negotiated wage rate* for current employees, shall be regarded as level B compliant, subject to sub-clause 8.2 below.
- 8.2. All companies described in 8.1 above shall achieve 100% wage compliance within a period of 18 months from 1 September 2012, in 6 monthly equal increments, failing which full compliance enforcement including the execution of writs shall apply to them.
- 8.3. The arrears of non-compliant companies shall be ring-fenced in a 'suspense account' at 100% of the verified arrears value and a written time-bound repayment plan agreed with the bargaining council. They should also sign a legally enforceable acknowledgement of debt.
- 8.4. The current policy that allows for a maximum of 6-months as a repayment period for arrears shall be amended, to allow for a maximum eighteen (18) months repayment period with effect from 1 November 2012.
- 8.5. The arrears will become payable in full should the employer become non-compliant, or default on the repayment plan at any time in future, unless otherwise agreed by the parties.
- 8.6. At every future meeting of the National Bargaining Council, each party shall make one practical concrete suggestion on how to further promote compliance in the industry.
- 8.7. The National Bargaining Council General Secretary shall have unfettered authority to serve any writ of execution upon any employer who fails to become compliant in terms of the new compliance provisions envisaged in this agreement, unless the parties agree otherwise.
- 8.8. Nothing in this agreement shall have the effect of downward migration of conditions of employment for any current employee.
- 8.9. The Trade Union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of this agreement.

15. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2014: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 September 2013.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues

designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.

- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

16. A TYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) The Council shall conduct a survey on the extent and type of contract work in the clothing industry.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.

17. TRADE UNION AGENCY SHOP

- (1) Scope- Agency fees will apply to employees who –
 - (a) are not members of the trade union party, but are eligible for membership thereof;
 - (b) are not bound by the provisions of the closed shop clause; and
 - (c) fall within the scope of this part of the Agreement.
- (2) **Union membership:** Employees are not compelled to become members of the trade union party.
- (3) **Agency fee deductions:** Every employer to whom this clause applies shall:
 - (a) deduct from the wages of an employee an amount equivalent to the union subscription; and
 - (b) pay such monies to the Regional Secretary of the Cape Regional Chamber of the Council, P O Box 1142, Woodstock, 7915, not later than the seventh day of the month of having made such deductions.
 - (c) deduct the agency fee from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be -
 - (a) paid to a political party as an affiliate fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

18. PRODUCTIVITY

The Productivity Scheme which was agreed to is:

Contained in Annexure B.

- (1) The bargaining council shall establish a dedicated productivity unit to promote productivity issues in the industry, as part of the NBC's value-added services.
- (2) The bargaining council shall commission a feasibility study for the establishment of a training institute similar to the previous Clothing Industry Training Board (CITB), to be operated under the auspices of the bargaining council as part of the NBC's value-added services.
- (3) Absenteeism
 - (i) The memorandum of Understanding as concluded between the parties on 14 June 2007 and implemented shall remain in effect for the duration of the Agreement only.
 - (ii) Where companies' have introduced the productivity scheme as per the provisions of the absenteeism MOU, such schemes are extended for the duration of this agreement, subject to plant level agreements entered into and signed off.

19. INDUSTRY PROTECTION FUND

Contained in Annexure C.

20. HIV/AIDS

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment as set out in Annexure A to this agreement shall be policy in the industry.

World International HIV/AIDS Day

The industry acknowledges the importance of creating awareness of the HIV/AIDS pandemic. To this end, employers are encouraged to grant employees on World International HIV/AIDS Day thirty minutes paid time off to participate in awareness activities agreed to at industry level.

21. CONTRACT EMPLOYEES

Contained in Annexure D.

22. WORKING IN ARRANGEMENTS

Employees shall be permitted to work in the time lost due to strike action incurred during the September / October 2009 protected wage strike at normal rates of pay, provided that this is agreed to at plant level and further provided that where agreed, such employees shall be offered a loan equal to between one week and two weeks' wages, deductible from their wages in equal weekly amounts over a 10 week period.

ANNEXURE A**CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS
AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING
INDUSTRY OF SOUTH AFRICA****1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:
 - eliminating unfair discrimination in the workplace based on HIV status;
 - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
 - promoting appropriate and effective ways of managing HIV in the workplace;
 - creating a balance between the rights and responsibilities of all parties.

2. OBJECTIVES

- 2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
 - (i) creating a non-discriminatory work environment;
 - (ii) dealing with HIV testing, confidentiality and disclosure;
 - (iii) providing equitable employee benefits;
 - (iv) dealing with dismissals; and
 - (v) managing grievance procedures.

- 2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:
- (i) creating a safe working environment for all employers and employees;
 - (ii) developing procedures to manage occupational incidents and claims for compensation;
 - (iii) introducing measures to prevent the spread of HIV;
 - (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
 - (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:
- (i) between employers, employees and the trade union in the workplace; and
 - (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

3. POLICY PRINCIPLES

- 3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5. Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

4. APPLICATION AND SCOPE

- 4.1. All employers and employees within the clothing manufacturing industry, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this code, the term "workplace" should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.
- 4.3. This Code, however, does not impose any legal obligation in addition to those in the Employment Equity Act, the Labour Relations Act and this code, or in any other legislation referred to in the Code.

- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

5. LEGAL FRAMEWORK

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:

- (i) Employment Equity Act, No. 55 of 1998;
- (ii) Labour Relations Act, No. 66 of 1995;
- (iii) Occupational Health and Safety Act, No. 85 of 1993;
- (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
- (v) Basic Conditions of Employment Act, No. 75 of 1997; and
- (vi) Medical Schemes Act, No. 131 of 1998.
- (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.

- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.

- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.

5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.

5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.

5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.

5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).

5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.

5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

- 5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].
- 5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT

- 6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:
- (i) recruitment procedures, advertising and selection criteria;
 - (ii) appointments, and the appointment process, including job placement;
 - (iii) job classification or grading;
 - (iv) remuneration, employment benefits and terms and conditions of employment;
 - (v) employee assistance programmes;
 - (vi) job assignments;
 - (vii) training and development;
 - (viii) performance evaluation systems;
 - (ix) promotion, transfer and demotion;
 - (x) termination of services.
- 6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:
- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
 - (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
 - (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
 - (iv) providing support for all employees infected or affected by HIV and AIDS; and
 - (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE

7.1. HIV Testing

- 7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

7.1.2. Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts. ^{1[1]}

7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out in item

7.1.4. Authorised testing

Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:

- (i) during an application for employment;
- (ii) as a condition of employment;
- (iii) during procedures related to termination of employment;
- (iv) as an eligibility requirement for training or staff development programmes; and
- (v) as an access requirement to obtain employee benefits.

7.1.5. Permissible testing

(a) An employer may provide testing to an employee who has requested a test in the following circumstances:

- (i) As part of a health care service provided in the workplace;
- (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
- (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.

(b) Furthermore, such testing may only take place within the following defined conditions:

- (i) At the initiative of an employee;
- (ii) Within a health care worker and employee-patient relationship;
- (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
- (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.

7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.

7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

^{1[1]} The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the National Bargaining Council for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.^{2[2]} Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

7.2. Confidentiality and Disclosure

7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.

7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.

7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:

- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
- (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
- (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

8. PROMOTING A SAFE WORKPLACE

8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.

8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:

- (i) the risk, if any, of occupational transmission within the particular workplace;
- (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
- (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
- (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
- (v) the procedures to be followed in applying for compensation for occupational infection;
- (vi) the reporting of all occupational accidents; and
- (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

^{2[2]} See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
 - (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.
- 9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

10. EMPLOYEE BENEFITS

- 10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits
- 10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

11. DISMISSAL

- 11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.
- 11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

12. GRIEVANCE PROCEDURES

- 12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.
- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.

- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

13. MANAGEMENT OF HIV IN THE WORKPLACE

- 13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:

13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and

13.1.2. Long and short term measures to deal with and reduce this impact, including:

- (i) An HIV/AIDS Policy for the workplace
- (ii) HIV/AIDS Programmes, which would incorporate:
 - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
 - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
 - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE

- 14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.

14.2. Broadly, impact assessments should include:

- (i) Risk profiles; and
- (ii) Assessment of the direct and indirect costs of HIV/AIDS;

14.3. Risk profiles may include an assessment of the following:

- (i) The vulnerability of individual employees or categories of employees to HIV infection;
- (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
- (iii) A profile of the communities from which the organisation draws its employees;
- (iv) A profile of the communities surrounding the organisation's place of operation; and
- (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.

14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:

- (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
- (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;

14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE

15.1. A Workplace HIV/AIDS Policy

15.1.1. Every workplace should develop an HIV/AIDS policy^{3[3]}, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;
- (ii) an outline of the HIV/AIDS programme;
- (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);
- (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
- (v) grievance procedures in line with item 12 of this Code;
- (vi) set out the means of communication within the organisation on HIV/AIDS issues;
- (vii) details of employee assistance available to persons affected by HIV/AIDS;
- (viii) details of implementation and coordination responsibilities; and
- (ix) monitoring and evaluation mechanisms.

15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including the trade union, employee representatives, occupational health staff and the human resources department.

15.1.3. The policy should reflect the nature and needs of the particular workplace.

15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:

- (i) communicated to all concerned;
- (ii) routinely reviewed in light of epidemiological and scientific information; and
- (iii) monitored for its successful implementation and evaluated for its effectiveness.

15.2. Developing Workplace HIV/AIDS Programmes

15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:

- (i) hold regular HIV/AIDS awareness programmes;
- (ii) encourage voluntary testing;
- (iii) conduct education and training on HIV/AIDS;
- (iv) promote condom distribution and use;
- (v) encourage health seeking behaviour for STD's;

^{3[3]} This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

A - 71

- (vi) enforce the use of universal infection control measures;
- (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
- (viii) endeavour to establish a wellness programme for employees affected by HIV/AIDS;
- (ix) provide access to counselling and other forms of social support for people affected by HIV/AIDS;
- (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
- (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4
- (xii) regularly monitor, evaluate and review the programme.

15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

16. INFORMATION AND EDUCATION

- 16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.
- 16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.

GLOSSARY

<i>Affected employee</i>	an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive
<i>AIDS</i>	AIDS is the acronym for "acquired immune deficiency syndrome". AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
<i>Epidemiological</i>	The study of disease patterns, causes, distribution and mechanisms of control in society.
<i>HIV</i>	HIV is the acronym for "human immuno deficiency virus". HIV is a virus which attacks and may ultimately destroy the body's natural immune system.
<i>HIV testing</i>	taking a medical test to determine a person's HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of 'risk behaviour' (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee's or job applicant's HIV status.
<i>HIV positive</i>	having tested positive for HIV infection.
<i>Infected employee</i>	an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
<i>Informed consent</i>	a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
<i>Policy</i>	a document setting out an organisation's position on a particular issue.
<i>Pre and post test counselling</i>	a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
<i>Reasonable Accommodation</i>	means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
<i>STDs</i>	acronym for "sexually transmitted diseases". These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.
<i>Surveillance Testing</i>	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

A - 73

ANNEXURE B**PRODUCTIVITY**

The following provisions shall be applicable to the plant level productivity incentive schemes:

- (1) Employers shall pay an amount of 0.5% of the weekly wage into a dedicated productivity incentive bank account. This must be done on a weekly basis or on the date that wages is normally paid, if it is paid at a time other than weekly.
- (2) The money in this productivity incentive bank account is ringfenced for the introduction of plant level productivity incentive schemes only.
- (3) This productivity incentive scheme bank account shall be opened and authorised on the basis of co-signatures, as follows: a person nominated by management plus a SACTWU shop steward (where there are no shop stewards at a workplace, a representative nominated by the workers shall be the second signatory).
- (4) With effect from 1 September 2008, each workplace shall have a period of 2 months within which they must reach agreement between management and the union about how the productivity incentive scheme at that workplace will function and how the incentives are to be paid.
- (5) If there is no productivity incentive scheme agreement reached by 1 November 2008, all the monies in the productivity bank account must be paid out to the workers as part of their wages, until an agreement on an appropriate productivity incentive scheme is reached.
- (6) The productivity incentive scheme agreements reached must ensure that all workers covered by the terms of this agreement, not just some, shall benefit from the incentive scheme.
- (7) All productivity scheme agreements reached must be registered with the National Bargaining Council for the Clothing Manufacturing Industry, within 1 month after agreement has been reached.
- (8) Productivity incentive scheme agreements shall not contain any provisions, which have the effect of downward variation of any term or condition of employment.
- (9) The productivity incentive scheme envisaged in this agreement shall be in addition to and not in place of any existing productivity incentive scheme, which may currently exist.
- (10) If the workplace closes or is liquidated, all the money left in the productivity incentive bank account must be paid out to the employees at that workplace and who are covered by the terms of this agreement.

ANNEXURE C**INDUSTRY PROTECTION FUND**

- (1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Bargaining Council, where such programmes are aimed at protecting the Industry in the respective Region.
- (3) The Fund shall commence on such date as decided by the parties to the Regional Council and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 10 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4) above, contribute an amount of 13 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the payment date specified in the relevant part of the Agreement and in the form and manner specified in relevant clause of each part of the Agreement.
- (7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber of the Bargaining Council for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.
- (8) The moneys collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in sub-clause (2), and including
 - (a) "Buy Local" campaigns;
 - (b) Combating customs fraud and illegal imports; or
 - (c) for such other strategies as meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Regional Employers' Associations who are members of the Bargaining Council become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in sub-clause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber.

A - 75

- (10) The Fund's moneys shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the Regional Employers' Association is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the Regional Employers' Association, as the case may be, may request confirmation in advance from the Regional Chamber in this regard.
- (12) No moneys of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the Regional Employers' Association and the Regional Chamber have signed a written agreement.
- (13) Any interest that is earned on Fund moneys at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the Regional Employers' Association shall, as the need arises, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan shall be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the parties shall be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he or she is satisfied that the expenditure-
 - (a) is in terms of the approved plan;
 - (b) is clearly classified by strategy, activity and the nature of the expense; and
 - (c) has been authorised by the Regional Secretary or National Secretary of SACTWU, or the Executive Director of the Regional Employers' Association.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure shall be presented to the Regional Chamber for approval prior to payment.

- (16) Any expenses that have been incurred by SACTWU or the Regional Employers' Association for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the Regional Employers' Association, may be recovered by the Regional Chamber from SACTWU or the Regional Employers' Association, as the case may be.
- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to the Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the Regional Employers' Association shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund and for which funds have been disbursed.
- (19) In the event that there is a disagreement between the parties as to whether any activity or expenditure or proposed activity or expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the

dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.

- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

A - 1

ANNEXURE D**CONTRACT EMPLOYEES**

- (1) Those contract employees with 12 months' or more employment with the same employer shall be converted into permanent employees.
- (2) All contract employees shall be entitled to receive a pro-rata share of all statutory payments due to permanent employees.
- (3) All contract employees who are in employ as at the end of November each year shall be entitled to full payment for all public holidays which fall during the annual shutdown period.
- (4) Employees who have completed a learnership shall not be placed on a further contract period after the completion of such a learnership, but shall be employed as a permanent fulltime employee.
- (5) Where there are more beneficial arrangements (other than those set out in sub-clauses (1) to (4) above) governing the employment of contract workers, such provisions shall remain effective.

PART B:

**CONSOLIDATED
AGREEMENT**

FOR THE

**FREE STATE &
NORTHERN CAPE
REGION**

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY**NATIONAL MAIN COLLECTIVE AGREEMENT**

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

Cape Clothing Association

Coastal Clothing Manufacturers' Association

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

¹South African Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' 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 National Bargaining Council for the
Clothing Manufacturing Industry.

¹ *This Employer association has not signed the 2013/2014 Party-to-Party Agreement, however, remains an Employer Party to the Bargaining Council and, hence, is reflected on this page.

1. SCOPE OF APPLICATION

The terms of this Agreement shall be observed in the Clothing Manufacturing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

Part A Provisions for the Eastern Cape Region

Part B Provisions for the Free State and Northern Cape Region

Part C Provisions for the KwaZulu-Natal Region

Part D Provisions for the Northern Region (Clothing)

Part E Provisions for the Northern Region (Knitting)

Part F Provisions for the Western Cape Region (Clothing)

Part G Provisions for the Western Cape Region (Country Areas)

Part H Provisions for the Western Cape Region (Knitting)

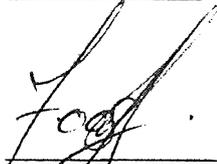
Part I Provisions for the Non-Metro Areas

by the employers and employees in the Clothing Industry who are members of the employers' organisations and the trade union, respectively.

2. PERIOD OF OPERATION OF THIS AGREEMENT

- (1) This agreement is binding on the parties hereto from 1 September 2013 until 31 August 2017 unless the parties agree otherwise in writing.
- (2) The parties record that they intend to request the Minister of Labour to extend this agreement to non-parties in the Clothing Industry in terms of section 32 of the Labour Relations Act 66 of 1995. The period of operation of this agreement in respect of non-parties will be determined by the Minister.

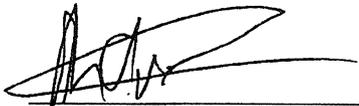
Original Agreement signed at CAPE TOWN on behalf of the Parties the 24th day of
FEBRUARY 2014.



FREDA GOSTHUYSEN
Chairperson



MARTHIE RAPHAEL
Vice-Chairperson



SICELO NDUNA
General Secretary

PART B : PROVISIONS FOR THE FREE STATE & NORTHERN CAPE REGION**1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed in the Clothing Industry-
- (a) by all employers who are members of the employers' organisation and who are engaged in the Clothing Industry, and by all employees who are members of the trade union and who are employed in the Industry;
- (b) in the Magisterial Districts of Bloemfontein, Frankfort, Kimberley, Kroonstad, Parys and Vredefort.
- (2) Clauses 1 (1) (a), 2, 23A(1) to 23A(3), 23A(5) and 34(5) of this Collective Agreement shall not apply to employers and employees who are non-members of the employers' organisation and trade union, respectively.
- (3) The Table of Contents of this Part B of the Main Collective Agreement is as follows:

CLAUSE NO:	DESCRIPTION
1.	Scope of Application of this part of the agreement
2.	Period of operation of this part of the agreement.....
3.	Definitions
4.	Remuneration
5.	Incentive Bonus Scheme.....
6.	Short Time
7.	Payment of Amounts due to Employees
8.	Proportion of Ratio of Employees.....
9.	Hours of Work.....
10.	Overtime and Sunday work
11.	Outwork
12.	Registration of an Employer
13.	Paid Holidays and Annual Leave
14.	Termination of Employment.....
15.	Premiums.....
16.	Tools
17.	Contracts
18.	Engagement, Transfer and Termination Forms
19.	Exemptions
20.	Council Funds.....
21.	Medical Benefit Society
22.	Extract from Wage Registers.....
23.	Trade Union Labour.....

24.	Powers of Designated Agents
25.	Prohibition of Employment of Children and of Forced Labour
26.	Exhibition of Agreement
27.	Overalls.....
28.	Safeguard of Workers' Earnings
29.	Provident Fund
30.	Administration and Interpretation of Agreement.....
31.	Severance Pay
32.	Maternity Benefits.....
33.	Procedure to Enforce Compliance with this Part of the Agreement.....
34.	Dispute Procedure.....
35.	Industry Protection Fund
36.	Frequency of Negotiations and Industrial Action.....
37.	Atypical Work, Outsourcing and Subcontracting
38.	Productivity (Annexure B).....
39.	HIV/AIDS (Annexure A)
40.	Contract Employees (Annexure D).....
41.	Working In Arrangements

2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

3. DEFINITIONS

Any expressions used in this part of the Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in the Act, any reference to an Act shall include any amendment of such Act. and unless the contrary appears, words importing the masculine gender shall include the feminine and the singular shall include the plural and vice versa: further, unless inconsistent with the context-

"Act" means the Labour Relations Act, 1995;

"boiler attendant" means an employee who, under the supervision of a foreman or factory manager, is responsible for maintaining the water level and steam pressure of a boiler in a workplace and who may stoke, rake' slice and draw the fire in such boiler and who removes ashes;

"checker/examiner/passers" means an employee who is responsible for checking and/or examining finished and unfinished garments for faults or defects during production, excluding the final passing of garments which shall be the responsibility of the quality controller;

"chopper-out" means an employee who is engaged in cutting out garments or portions of garments by hand or machine from one or more layers of materials that have already been marked;

"cleaning" means the removal of spots, marks or foreign matter from materials and garments and/or the removal and nip ping off of threads;

"cloakroom supervisor" means an employee who is in charge of a change room in which an

employee may change or store his clothing or of lockers in which an employee may store his effects. and who may supervise the cleaning of the change rooms, toilets and/or kitchen premises;

"Clothing Industry" or "Industry" means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassiers, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear; nightwear (including pyjamas), outerwear, protective wear (including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties), and underwear;

A. and includes -

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or person undertaking work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of button-holes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making of garments from knitted fabric in the establishment in which the fabric

was knitted;

- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is (are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

B. but excludes -

- (a) belts, braces, garters, suspenders and armlets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurements of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurements of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

"complying employer" means an employer which is registered with the Council and which has registered all permanent and contract employees with the Council, and which has given effect to all collective agreements of the Council which are applicable to it in each of its establishments, or which has received exemption from any collective agreement to the extent of such exemption;

"continuous service" means, without restricting the ordinary meaning of the phrase, all periods of employment with the same employer and includes any kind of leave due in law or agreed to between an employee and his employer Provided that any periods of employment with the same employer, interrupted by a period of unemployment of less than one year. shall be deemed continuous;

"Council" means the Northern Chamber (Free State and Northern Cape Region) of the National Bargaining Council for the Clothing Manufacturing Industry;

"despatch clerk" means an employee who is responsible for the despatch or the packing of goods for transport or delivery and who may supervise the assembling, checking, mass measuring, packing, marking, addressing or despatching of such goods or packages;

"despatch packer" means an employee who is wholly or mainly engaged in the making up of orders and/or parcels and/or bales, and folds and/or packs garments in readiness for despatch;

"driver of a light motor vehicle" means an employee who has a light motor vehicle licence (previously referred to as 'Code 8') and who drives a vehicle with a gross vehicle mass of less than 2 000 kg;

"driver of a medium motor vehicle" means an employee who has a medium motor vehicle licence (previously referred to as 'Code 10') and who drives a vehicle with a gross vehicle mass of more than 2 000 kg;

"employee" means, subject to the definition in section 213 of the Act, those employees falling within the jurisdiction of the scope of the Bargaining Council;

"employer" means any person who employs or provides work for any person within the Industry;

"experience" means the total period or periods of employment of an employee in the Clothing Industry and/or Bespoke Tailoring Industry and/or private dressmaking and/or knitting industry in any capacity or capacities: Provided that, for the purpose of computing an employee's experience, employment for 16 weeks in any half-year shall be deemed to have been employment for the whole half-year: Provided further that a trainee in his first half-year of employment, although having less than 16 weeks, but more than 13 weeks' experience on the last day of the half-year, shall be deemed to have been in employment for the whole half-year: Provided further that the trial period of an employee in terms of clause 14 (1) (b) (iii) shall be deemed to be experience only if the contract of service is confirmed:

"factory clerk" means an employee who is employed in the production area of the factory and who is wholly or mainly employed in the recording of attendance and/or production data or the checking of work in and out;

"finisher" means an employee who is engaged in putting in pads or wadding into shoulders of coats, fastening or sewing sleeveheads, wadding sleeveheads, felling silk facings already basted into position, making buttonholes by hand or felling sleevehead linings by hand;

"fitter-up" means an employee who tacks the outside of garments together with the cut-out linings (called trimmings) and adjusts the outside and the inside together accurately so that the parts may go forward to the machine to be put together correctly;

"fixed-term contract employee" means an employee who is employed on a full-time basis for a predetermined fixed period or until the completion of a specific short-term task;

"foreman" means an employee who is in charge of the employees in a factory, and who exercises control over such employees and who is charged with the responsibility for engaging or terminating the employment of such employees, and who is responsible for the efficient performance by them of their duties;

"former scriber" means an employee who scribes and breaks a paper template or former in accordance with a master pattern supplied to him;

"general worker" means an employee who is engaged in one or more of the following operations:

- (a) Fixing machine belts; oiling machines, filling oil cans or similar work;
- (b) oiling and/or greasing motor vehicles;
- (c) issuing cottons;
- (d) winding bobbins;
- (e) folding garments;
- (f) turning coat facings out after machining;
- (g) marking and/or soaping the position of pockets, buttons, buttonholes, loops, fasteners, darts, hems of turn-ups;
- (h) packing garments into boxes or into other suitable wrappings or into bundles prior to their being sent to the despatch department;
- (i) turning out or over the edges of collars, facings, bands, cuffs, pockets or flaps, whether by hand or machine, other than a power-driven machine;
- (j) pinning shirts or other garments or pinning together parts of garments in preparation for machining;
- (k) shaping by template the lapels or collars of jackets or overcoats preparatory to underbasting, but excluding the operations performed by a shaper;
- (l) marking or trimming the shape of the necks of shirts, underwear or nightwear;
- (m) sorting or snipping off threads or removing spots or marks from materials or garments;
- (n) sorting out garments or parts of garments;

- (o) stamping the sizes or identity work numbers on garments or parts of garments;
- (p) delivering letters, messages or goods on foot or by means of a foot or hand propelled vehicle;
- (q) cutting by hand any trimming (not being piece goods) to a given length or shape;
- (r) making belts, buckles, button and shank moulds by machines operated by hand, excluding making belts by sewing machine;
- (s) making up bundles;
- (t) marking positions of button-holes, buttons, pockets, flaps, etc.;
- (u) pulling bastings;
- (v) sloping;
- (w) soaping;
- (x) turning sleeves or trousers inside out;
- (y) tying off threads;
- (z) pressing parts of unfinished garments;
- (aa) making tea or similar beverages;
- (ab) sorting buttons according to size or colour;
- (ac) carrying messages or garments or parts of garments from one place to another within the workplace, excluding distributing work among the employees;
- (ad) fusing;
- (ae) winding;

"half-year" means the six-monthly periods commencing on the first day of January and/or July;

"hourly wage" means the weekly wage, divided by the number of hours prescribed by clause 9 of this part of the Agreement;

"invisible mender" means an employee who is engaged in mending or repairing a garment or other article composed of woven or knitted material, by hand or machine, using the stoating, fine drawing or reentering processes according to the kind of tear or damage to the material and includes the mending of silk by drawing through the broken threads;

"invoice clerk" means an employee who writes out an invoice from an order form, extends and casts totals and thereafter prepares summaries or other statistical records or maintains stock records;

"knitting machine operator" means an employee who is engaged in all of the following duties:

- (a) Changing needles and jack;
- (b) straightening tricks;
- (c) running on after press-off;
- (d) tying in yarn and keeping the machine running;
- (e) checking widths and lengths and sizes;
- (f) checking the production ticket to ensure that the correct colour, size, yarn and dye lot are being used/knitted;
- (g) checking the quality of fabric for faults and separating blanks;

"labourer" means an employee who is engaged in one or more of the following activities:

- (a) Cleaning premises, plant, machines, vehicles, tools or other articles;
- (b) loading or unloading goods;
- (c) carrying, moving or stacking goods;

- (d) opening or closing or strapping cartons or other containers; nailing packing cases or sewing up or strapping bales or, under the supervision of a despatch packer or clerk, parcelling goods;
- (e) making or maintaining fires, or removing refuse or ashes;
- (f) oiling or greasing vehicles, other than motor vehicles;
- (g) gardening, i.e. planting or digging, mowing, weeding, raking or watering or mixing or spreading garden soil or material or cutting or trimming edges or trees and plants;

"layer-up" means an employee who is engaged in the laying of material in one or more thickness or layers preparatory to cutting;

"level B compliance" refers to the status of non-compliant employers who bring themselves within the provisions of clause 34(8). For so long as such employers abide by all the conditions set out therein, no writs of execution in respect of non-compliance will be enforced against them, and they will be entitled to Level B Compliance Certificates from the Council;

"maintenance hand" means an employee who performs one or more of the following operations:

- (a) Making minor adjustments or repairs to machinery or installations, or assisting a mechanic;
- (b) making minor renovations or repairs to buildings;

"marker-in" means an employee who marks out the pattern on a layer or layers of material, preparatory to cutting out;

"marking of trimmings" means the marking of the position of pockets, buttons, button-holes, loops, fasteners, darts, hems, turn-ups and the like, preparatory to further operations;

"mechanic" means an employee who is engaged in work normally performed by a skilled artisan (other than minor repairs or adjustments to machinery or installations or minor repairs or renovations to buildings), and for the purposes of this definition, the expression "skilled artisan" means a person who has served his apprenticeship in a trade designated or deemed to have been designated under the repealed Manpower Training Act, 1981, or who holds a certificate of proficiency under section 6 or a trade diploma under section 7 of the said Act or any applicable certificates or diplomas in terms of the skills, Development Act, 1998.

"mechanic, unqualified" means an employee who performs duties similar to those of a mechanic but who does not have a certificate of proficiency or a diploma;

"medical practitioner" means a person entitled to practice as a medical practitioner in terms of the Medical, Dental and Supplementary Health Service Profession Act, 1974 (Act No. 56 of 1974);

"motor vehicle driver" means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, the expression "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;

"National Council" means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of the Act;

"night work" means work performed after 18:00 and before 06:00 the next day;

"normal shift worker" means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

"old age" means 55 years of age;

"operational requirements" means requirements based on the economic; technological, structural or similar needs of an employer;

"ordinary hours of work" means a 42-hour week of five days, or 45 hours in any one week in respect of a watchman;

"overtime" means the time that an employee works during a day or a week in excess of ordinary hours of work;

"part-time driver of a motor vehicle" means an employee who is engaged in driving a motor

B - 8

vehicle for not more than three hours in the aggregate on any day, and for the purposes of this definition, "driving a motor vehicle" includes all periods of driving and any time spent by the driver while in charge of the vehicle or on work connected with the vehicle or the load;

"passer or checker or examiner" means an employee who is responsible for passing or checking completed or uncompleted garments for faults but is not responsible for the final quality control of the garment;

"pattern grader" means an employee who grades patterns from any material to various sizes according to requirements or directions given to him;

"plain sewing" means the performing by hand of one or more of the following operations:

Tacking permanent turn-ups, tacking and waistband linings, sewing on hooks and eyes, tickets or press studs, fastening catch in top of trousers, sewing on buttons, making and sewing on hangers, felling crutch linings in trousers, felling buttons or waistband linings, felling necks of vests, fastening edge stays, felling bottoms of linings or seams of linings already basted into position, felling binding, fastening facings inside that have already been basted into position;

"pleater" means an employee who places cloth which has been cut to a pattern in a prepared former in readiness for processing in an autoclave or similar machine and who may remove the pleated cloth from the former after the pleating process;

"presser" means an employee who is engaged in pressing finished garments by hand or machine;

"qualified employee" means an employee whose period or periods of experience entitle him to be paid the highest wage prescribed by clause 4 (1) for an employee of his class;

"quality controller" means an employee who has ultimate responsibility for the quality of a garments sent to customers;

"sample machinist" means an employee who completely machines prototype garments, other than patent machining;

"screen printer" means an employee engaged in-

- (a) operating a screen printing machine;
- (b) setting up screens in sequence of colour to be printed on fabric;
- (c) squaring off and testing that screens fit according to master feeler;
- (d) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;
- (e) positioning colours in correct sequence to ensure that colour combination matches the master feeler and colour card;
- (f) checking the base fabrics to ensure correct face and quality;
- (g) supervising the operations of the colour thrower;
- (h) supervising the handling of screens to and from wash bays;
- (i) examining screens from wash bays to ensure that they are in a satisfactory condition;
- (j) carrying out checks for faults;

"set leader" or **"team leader"** means an employee in a set or team who is generally responsible for the work executed by the employees comprising such set or team;

"sewing machinist" means an employee who is engaged in operating a sewing machine using needle and thread, excluding an employee who is engaged in setting in sleeves and/or sewing round men's and ladies' tailored coats and overcoats;

"shaper" means an employee who is engaged in shaping by hand the designs of lapels and the collars of coats preparatory to underbasting, but excluding trimming by hand;

"short time" means a temporary reduction in the number of ordinary hours of work owing to slackness of trade, shortage of supplies, a general breakdown of plant or machinery or an actual breakdown or threatened breakdown of buildings;

"stores clerk" means an employee who is employed in the store or warehouse of the workplace performing clerical duties;

"supervisor" means an employee who, under the supervision of a foreman, is in charge of a group of employees in a workplace or a department thereof and who is responsible for the efficient performance by them of their duties, and who may supervise set leaders or team leaders, but who does not have the power to engage or dismiss employees;

"task-work" means the task set by the employer or his representative to an employee of a definite number of garments or parts of garments to be made up by such employee in a specified time;

"trade union representative" means a member of a trade union who is elected to represent employees in a workplace;

"trimmer" means an employee who is engaged in marking-in or cutting linings or interlinings; or re-cutting single pieces of a garment;

"twilight shift" means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

"twilight shift worker" means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

"wage" means the amount payable to an employee in terms of clause 4 (1) in respect of ordinary hours of work as specified in clause 9: Provided that if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that specified in clause 4 (1) it means such higher amount;

"watchman" means an employee who is engaged in guarding premises or other property;

"winding" means the winding of yarn on a yarn-winding machine;

"working day" means any day on which work is usually performed in the Clothing Industry;

"workplace" means the place or places where the employees of an employer work; and if an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where employees work in connection with each independent operation constitutes the workplace for that operation.

4. REMUNERATION

- (1) Subject to subclauses (4), (5) and (6), the minimum weekly wage to be paid by an employer to each employee of the undermentioned classes shall be as set out below: Provided that if an employee performs work in more than one category, he shall be classified in the grade for which the highest wage is prescribed.

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
A. ALL AREAS					
(i)	(a) Foreman	2 445.00	1 956.00	2 456.50	1 965.00
	(b) Supervisor/Quality Controller				

B - 10

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	(i) Qualified	999.00	799.00	1 004.50	803.50
	(ii) Learners				
	first six months of experience	686.00	549.00	689.00	551.00
	second six months of experience	819.00	655.00	822.50	658.00
	Thereafter, the wage specified in (ii)(i) i.e.	999.00	799.00	1 004.50	803.50
	(c) Cloakroom Supervisor/Watchman	696.50	557.00	698.50	559.00
	(d) Mechanic	2 293.50	1 835.00	2 304.50	1 843.50
	(e) Unqualified Mechanic	854.50	683.50	859.50	687.50
	(f) Watchman	696.50	557.00	698.50	559.00
	(g) Labourer	544.00	435.00	546.50	437.00
	(h) Boiler Attendant	598.50	479.00	600.50	480.50
(ii)	Pattern Grader				
	(i) Qualified	1 295.50	1 036.50	1 301.00	1 041.00
	(ii) Learners				
	first six months of experience	500.00	400.00	502.50	402.00
	second six months of experience	599.50	479.50	601.50	481.00
	third six months of experience	698.00	558.50	701.50	561.00
	fourth six months of experience	799.50	639.50	803.00	642.50
	fifth six months of experience	897.50	718.00	901.00	721.00
	sixth six months of experience	996.00	797.00	1 000.50	800.50
	seventh six months of experience	1 095.50	876.50	1 100.00	880.00
	next four months of experience	1 194.50	955.50	1 198.50	959.00
	Thereafter, the wage specified in (ii)(i) i.e.	1 295.50	1 036.50	1 301.00	1 041.00
(iii)	Marker-In				
	(i) Qualified	999.00	799.00	1 004.50	803.50
	(ii) Learners				
	first six months of experience	500.00	400.00	502.50	402.00
	second six months of experience	561.50	449.00	564.00	451.00
	third six months of experience	627.50	502.00	629.50	503.50
	fourth six months of experience	688.00	550.50	690.00	552.00
	fifth six months of experience	751.00	601.00	753.50	603.00
	sixth six months of experience	811.50	649.00	815.50	652.50
	seventh six months of experience	874.50	699.50	879.00	703.00
	next four months of experience	935.50	748.50	939.50	751.50
	Thereafter, the wage specified in (iii)(i) i.e.	999.00	799.00	1 004.50	803.50
(iv)	Shaper & Chopper-out, other than an interlining and/or trimming chopper-out				
	(i) Qualified	801.00	641.00	805.00	644.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	530.00	424.00	532.00	425.50
	third six months of experience	585.00	468.00	589.00	471.00

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	fourth six months of experience	638.50	511.00	641.00	513.00
	fifth six months of experience	692.50	554.00	696.50	557.00
	next four months of experience	747.00	597.50	750.50	600.50
	Thereafter, the wage specified in (iv)(i) i.e.	801.00	641.00	805.00	644.00
(v)	Checker, Examiner and/or Passer				
	(i) Qualified	696.50	557.00	698.50	559.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	530.00	424.00	532.00	425.50
	third six months of experience	585.00	468.00	589.00	471.00
	next four months of experience	639.00	511.00	641.50	513.00
	Thereafter, the wage specified in (v)(i) i.e.	696.50	557.00	698.50	559.00
(vi)	(a) Invoice Clerk				
	(i) Qualified	999.00	799.00	1 004.50	803.50
	(ii) Learners				
	first six months of experience	720.00	576.00	723.00	578.50
	Thereafter, the wage specified in (vi)(a)(i) i.e.	999.00	799.00	1 004.50	803.50
	(b) Despatch Clerk, Factory Clerk and/or Stores Clerk				
	(i) Qualified	732.00	585.50	735.00	588.00
	(ii) Learners				
	first six months of experience	525.50	420.50	527.50	422.00
	second six months of experience	628.50	503.00	630.50	504.50
	Thereafter, the wage specified in (vi)(b)(i) i.e.	732.00	585.50	735.00	588.00
(vii)	Sewing Machinist engaged in setting in sleeves and/or sewing round men's and ladies' tailored coats and overcoats:				
	(i) Qualified	788.50	631.00	791.50	633.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	527.00	421.50	530.00	424.00
	third six months of experience	578.50	463.00	581.00	465.00
	fourth six months of experience	630.50	504.50	633.00	506.50
	fifth six months of experience	682.50	546.00	687.00	549.50
	next four months of experience	736.50	589.00	739.50	591.50
	Thereafter, the wage specified in (vii)(i) i.e.	788.50	631.00	791.50	633.00
(viii)	Driver of a Motor Vehicle, the unladen mass of which together with the unladen mass of any trailer/trailers drawn by such vehicle—:				
	(a) Does not exceed 2 722 kg	862.50	690.00	866.00	693.00
	(b) Exceeds 2 722 kg	1 002.00	801.50	1 006.50	805.00

B - 12

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
(ix)	Part-time Driver of a Motor Vehicle	784.50	627.50	788.50	631.00
(x)	Knitting Machine Operator				
	(i) Qualified	1 026.50	821.00	1 032.00	825.50
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	568.50	455.00	571.50	457.00
	third six months of experience	659.00	527.00	662.00	529.50
	fourth six months of experience	751.50	601.00	754.00	603.00
	fifth six months of experience	842.50	674.00	846.00	677.00
	next four months of experience	936.00	749.00	940.50	752.50
	Thereafter, the wage specified in (x)(i) i.e.	1 026.50	821.00	1 032.00	825.50
(xi)	Maintenance hand				
	(i) Qualified	589.00	471.00	591.00	473.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	498.00	398.50	500.00	400.00
	third six months of experience	517.00	413.50	519.50	415.50
	fourth six months of experience	541.50	433.00	544.50	435.50
	next four months of experience	568.00	454.50	571.00	457.00
	Thereafter, the wage specified in (xi)(i) i.e.	589.00	471.00	591.00	473.00
B. IN THE MAGISTERIAL DISTRICTS OF BLOEMFONTEIN, KIMBERLEY AND KROONSTAD					
(i) (a)	Sewing Machinist				
	(i) Qualified	696.50	557.00	698.50	559.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	511.50	409.00	515.00	412.00
	third six months of experience	548.00	438.50	550.00	440.00
	Thereafter, the wage specified in (i)(i) i.e.	696.50	557.00	698.50	559.00
(i) (b)	Invisible Mender, Finisher, Presser, Trimmer, Marker-In and/or Chopper-out of linings and trimmings, Former Scriber and Screen Printer				
	(i) Qualified	696.50	557.00	698.50	559.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	511.50	409.00	515.00	412.00
	third six months of experience	548.00	438.50	550.00	440.00
	fourth six months of experience	585.00	468.00	589.00	471.00
	fifth six months of experience	621.50	497.00	624.50	499.50
	next four months of experience	658.50	527.00	661.50	529.00
	Thereafter, the wage specified in (i)(i) i.e.	696.50	557.00	698.50	559.00

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	Set Leader and/or Team Leader	739.50	591.50	743.00	594.50
(ii)	General Worker/Pleater				
	(i) Qualified	525.50	420.50	527.50	422.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	499.50	399.50	501.00	401.00
	Thereafter, the wage specified in (ii)(i) i.e.	525.50	420.50	527.50	422.00
(iii)	Despatch Packer and Layer-up				
	(i) Qualified	543.50	435.00	546.00	437.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	second six months of experience	509.00	407.00	511.00	409.00
	Thereafter, the wage specified in (iii)(i) i.e.	543.50	435.00	546.00	437.00
(iv)	Plain Sewer				
	(i) Qualified	568.50	455.00	571.50	457.00
	(ii) Learners				
	first six months of experience	475.00	380.00	478.00	382.50
	Thereafter, the wage specified in (iv)(i) i.e.	568.50	455.00	571.50	457.00
(v)	Sample Machinist	791.50	633.00	795.50	636.50
C. IN THE MAGISTERIAL DISTRICTS OF FRANKFORT, PARYS AND VREDEFORT					
(i)	Sewing Machinist				
(a)					
	(i) Qualified:	652.50	522.00	654.50	523.50
	(ii) Learners:				
	first six months of experience	447.50	358.00	450.50	360.50
	second six months of experience	481.50	385.00	485.00	388.00
	third six months of experience	516.00	413.00	518.00	414.50
	Thereafter, the wage specified in (i)(a)(i) i.e.	652.50	522.00	654.50	523.50
(i)	Invisible Mender, Finisher, Presser, Trimmer, Marker-In and/or Chopper-out of linings and trimmings, Former Scriber and Screen Printer:				
(b)					
	(i) Qualified:	652.50	522.00	654.50	523.50
	(ii) Learners:				
	first six months of experience	447.50	358.00	450.50	360.50
	second six months of experience	481.50	385.00	485.00	388.00
	third six months of experience	516.00	413.00	518.00	414.50
	fourth six months of experience	549.50	439.50	553.50	443.00
	fifth six months of experience	583.00	466.50	586.00	469.00
	Next four months of experience	617.00	493.50	620.00	496.00
	Thereafter, the wage specified in (i)(b)(i) i.e.	652.50	522.00	654.50	523.50

B - 14

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	Set Leader and/or Team Leader	693.50	555.00	697.00	557.50
(ii)	General Worker/Pleater				
	(i) Qualified	501.00	401.00	503.00	402.50
	(ii) Learners				
	first six months of experience	447.50	358.00	450.50	360.50
	second six months of experience	475.00	380.00	476.50	381.00
	Thereafter, the wage specified in (ii)(i) i.e.	501.00	401.00	503.00	402.50
(iii)	Despatch Packer				
	(i) Qualified	523.50	419.00	526.00	421.00
	(ii) Learners				
	first six months of experience	447.50	358.00	450.50	360.50
	second six months of experience	485.50	388.50	487.50	390.00
	Thereafter, the wage specified in (iii)(i) i.e.	523.50	419.00	526.00	421.00
(iv)	Layer-Up				
	(i) Qualified	518.50	415.00	521.00	417.00
	(ii) Learners				
	first six months of experience	447.50	358.00	450.50	360.50
	second six months of experience	486.00	389.00	488.00	390.50
	Thereafter, the wage specified in (iii)(i) i.e.	530.50	424.50	533.50	427.00
(v)	Plain Sewer				
	(i) Qualified	542.00	433.50	545.00	436.00
	(ii) Learners				
	first six months of experience	450.00	360.00	453.50	363.00
	Thereafter, the wage specified in (iv)(i) i.e.	542.00	433.50	510.00	408.00
(vi)	Sample Machinist	741.00	593.00	696.50	557.00

NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by 6.5% Across-the-Board.

(2) New Employees

2.1 New employees shall be paid a weekly wage of 70% of the rate in metro areas, subject to the following provisions:

2.1.1 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a period of 3 years.

2.1.2 The provision is only applicable to compliant companies.

- 2.1.3(a) The new entry-level wage provision will continue in force and effect as an industry-wide provision after the 31st August 2014 if there has been an increase in employee strength of compliant employers in the industry of at least 15% as at 31st March 2014, monitored on a bi-annual basis.
- (b) The bi-annual benchmark monitoring shall be measured against the following schedule of new employment growth:
- | | |
|-------------------|--------------|
| 1 March 2012: | 3% increase |
| 1 September 2012: | 6% increase |
| 1 March 2013: | 9% increase |
| 1 September 2013: | 12% increase |
| 1 March 2014: | 15% increase |
- 2.1.4 It is only applicable to those compliant companies who were in existence and operational as at 1 June 2011.
- 2.1.5 All other provisions of the main agreement shall be applicable to new employees.
- 2.1.6 The closed shop shall be applicable to all new employees.
- 2.1.7(a) The employee strength to determine whether or not there has been an increase in employee strength will be measured by comparing the employee strength of compliant employers whose businesses are registered with the bargaining council on the 1st June 2011, as per clause 2.1.3, and to that of the employee strength of compliant employers whose businesses are registered with the bargaining council on the 31st March 2014, i.e. a period of 30 months following the implementation of this Agreement.
- (b) In the event that the employee strength does not increase as per the provisions of this Agreement and more specifically, the provisions of Clause 2.1.3 above, the provisions of the new-entry wage provision will terminate.
- (c) Upon such termination of the application of the new entry level wage provision, the wages of all employees earning the new-entry wage will be increased to the full applicable gazetted wage for all job categories from the first pay week following the 31st August 2014, unless the parties during the 2014/2015 round of annual or other negotiations agree otherwise or agree to an alternative to address any further job losses or the absence of job growth in the industry.
- 2.1.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to employ employees at the rates specified in sub-clause 2.1.3 (a) above.
- 2.1.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 2.1.10 Qualified employees shall be employed at the qualified new entry rate, subject to sub-clause 2.1.1.
- 2.1.11 Effective 1st September 2011, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage

B - 16

rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.

(3) INCENTIVISED WAGE RATES

The 'new entry wage rates' provisions as specified in clause 4 of the 2011/2012 party-to-party substantive agreement shall be abolished and replaced with the following incentivised wage rates provisions, applicable to new employees only:

- 3.1 With effect 1 September 2013, new employees shall be paid a guaranteed wage of no less than 80% of the normal qualified gazetted wage rate applicable to current employees, subject to the following provisions:
- 3.2 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a minimum period of 3 years, unless the applicant employee agrees otherwise with his/her prospective employer.
- 3.3 The guaranteed wage rate as specified in sub-clause 3.1 above shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the qualified rate, provided the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1 September 2012, once a national framework agreement governing the incentive portion has been agreed.
- 3.4 The provisions of clause 3 of this circular is only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.
- 3.5 All other provisions of the industry's Main Agreement shall be applicable to new employees.
- 3.6 The closed shop shall be applicable to all new employees.
- 3.7 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to re-employ employees at the rates specified in sub-clause 3.1 above
- 3.8 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 3.9 Qualified employees shall be employed at the qualified rate, subject to sub-clause 3.2 above.
- 3.10 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party to party agreement, which was subsequently extended to non-parties and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus the annual increases, and subject to the companies at which they are employed meeting the compliant employment growth targets as set out in the 2011/2012 wage agreement.
- 3.11 Effective 1st September 2012, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of

the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.

- 3.12 The parties shall negotiate a national framework agreement at national bargaining council level, to give enabling effect to the plant level incentivised wage component as contemplated in sub-clause 3.3 of this agreement. This shall be finalised within a period of 4 months with effect from 1 October 2012 (excluding the annual shutdown period). Thereafter, companies who qualify for the provisions of clause 4 of the substantive agreement and who wish to implement it shall have a 2 month period to conclude plant-level incentive arrangements in terms of the provisions of the national framework agreement.
- 3.13 The deadlock breaking mechanism for the national framework agreement is either binding interest arbitration or, at the end of the prescribed period, the entire 80% dispensation falls away, unless other forms of deadlock breaking mechanisms are agreed between the parties.
- 3.14 Should the 80% dispensation fall away in consequence of the provision in sub-clause 3.13 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreement rate.
- 3.15 The deadlock breaking mechanism for operationalising the incentive component at plant level shall consist firstly of a facilitation process by a panel of experts jointly appointed by the employer and trade union parties to this agreement and if not resolved, by an advisory award by the panel, unless other forms of deadlock breaking mechanisms are agreed to between the parties.
- 3.16 The parties agree that the only outstanding issue pertaining to the national incentivised framework agreement is the deadlock breaking mechanism. The Parties agree to finalise this matter within two (2) weeks from the date of signing this agreement, failing which the provision of sub-clause 3.13 above will become effective.
- (4) Notwithstanding the definition of "experience", an employee who is transferred from any occupation to an occupation for which a higher qualified wage is prescribed shall dealt with as follows:
- (a) An employee transferred to the machinist occupation shall, if such employee has already completed six months' experience or more, be credited with six months' experience and, irrespective of the wage previously paid to him, he shall be paid a wage in accordance with his credited plus his actual experience as a machinist.
 - (b) If an employee who is a chopper-out is transferred to the class of marker-in, he shall be credited with actual experience as a chopper-out, but with only four half-years. If his experience as a chopper-out exceeds four half-years, he shall continue to receive the wage paid as a chopper-out or the wage according to his credited plus his actual experience as a marker-in, whichever is the higher.
 - (c) In every other case of a transfer, not dealt with in (a) and (b) above, the employee shall be regarded as having no experience but shall continue to receive the wage he received prior to the transfer, until such time as he is entitled to receive an increase according to the experience gained in his new occupation.
 - (d) Should an employee be transferred back to his previous occupation, he shall revert back to the wage paid or due to him in that occupation, according to his experience.
 - (e) A qualified sewing machine operator who is transferred to supervisor category shall be credited with six months' experience as a supervisor and shall be entitled to a wage in accordance with his credited plus his actual experience in that category.

B - 18

- (5) Reduction in wages not permitted: Nothing in this Collective Agreement shall operate to reduce the wage of an employee who, at any time prior or subsequent to the date of coming into operation of this part of the Agreement, was or may be paid wages in the Industry at a higher rate than the minimum provided in this clause, and such employee shall continue to be paid and be entitled to receive wages at such higher rate as if such higher rates were the minimum in respect of that employee. except where otherwise stated in this part of the Agreement.
- (6) An employee who immediately prior to the date of coming into operation of this Collective Agreement was in receipt of a higher wage than that prescribed for an employee of his class, shall receive an increment equal to the difference between the wage prescribed for an employee of his class in the Agreement and the prescribed wage applicable to such employee.
- (7) Person in charge of a first-aid box: The employee in charge of a first-aid box shall receive R3 per week in addition to his weekly wage.

5. INCENTIVE BONUS SCHEME

- (1) A wage incentive scheme may be worked in any workplace by mutual agreement between the management, representatives of the trade union and the employees concerned, and may be altered only by mutual agreement between these parties. Such scheme may be terminated by either the employer or the trade union giving not less than one week's notice.
- (2) An incentive scheme may be introduced in respect of such employees employed in a particular section of a workplace: Provided that it shall be applied within a reasonable period after its commencement to all employees engaged on the production of a particular garment, in respect of which the scheme has been introduced.
- (3) Subject to the provisions of clauses 6 (1) and 7 (3), such incentive wage scheme shall enable an employee to earn at least 10 per cent in excess of his ordinary rate of pay for any additional output.
- (4) A copy of the incentive bonus rates and subsequent alterations thereto, agreed on and duly signed by the employer and the secretary of the trade union, shall be filed with the Secretary of the Council, and the employer shall retain a copy thereof and display it in a prominent place easily accessible to his employees.

6. SHORT TIME

- (1) Where short time has been or is being introduced in any workplace, an employee who is not required to work on any day shall be given notice of that fact not later than closing time of the working day prior to the day of which his services are not required.
- (2) An employee who attends the workplace on any day shall, unless he has received notice in terms of subclause (1) of this clause that his services will not be required on such day, be employed for at least four hours or be paid wages in lieu thereof.
- (3) Where full-time is not being worked in any workplace, the work shall be distributed evenly among the employees in each of the sections or departments concerned.
- (4) Where short time has been introduced in any workplace, the employer shall furnish to the Secretary of the Council such particulars as are relevant, in the form and manner specified by the Council and forward it to, P O Box 1142 Woodstock, 7915, within seven days of the commencement of such short time.

7. PAYMENT OF AMOUNTS DUE TO EMPLOYEES

- (1) (a) An employer shall pay wages and other remuneration in sealed envelopes, showing the name and occupation of the employee, number of hours worked on ordinary time and/or overtime and/or Sunday time, rate of pay and any deductions made. Such payments shall be made weekly, in cash, or may be deposited into the employee's account with a financial institution, or by bank transfer, or by cheque, during working hours, on the nominated pay day of a workplace:

Provided that where an employee's service is terminated other than on the usual pay day of the workplace, any amounts due to him shall be paid immediately on termination. Where a paid public holiday falls on a Friday, such payments shall be made on the last working day immediately preceding such holiday.

- (b) Monthly paid employees shall be paid not later than the last pay day of the month, or on termination of employment if this should not take place on the ordinary pay day of the employee.
- (c) In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.
- (2) An employer shall pay to an employee who, during any part of any one week, is employed on more than one class of work for which different weekly wages are hereby prescribed, the maximum of such different weekly wages for the whole of that week.
- (3) No deductions whatsoever shall be made from the amounts due to an employee, except as provided hereunder, and each amount and the purposes for which it is deducted shall be shown separately on the pay envelope:
- (a) Except where otherwise provided in this part of the Agreement, whenever a weekly paid employee is absent from work. Other than on the instructions or at the request of his employer, a pro rata amount for the actual time lost may be deducted;
- (b) subject to the provisions of clause 6 of this part of the Agreement, where short time has been introduced a deduction may be made for the actual time not worked;
- (c) with the written consent of the employee, deductions may be made for insurance or pension funds;
- (d) contributions to the Council in terms of clause 20 of this part of the Agreement may be deducted;
- (e) contributions to the Medical Benefit Society in terms of clause 21 of this part of the Agreement may be deducted;
- (f) with the written consent of the employee, contributions to the funds of the trade union may be deducted;
- (g) the actual cost of scissors supplied by the employer may be deducted;
- (h) any amount which an employer is legally or by order of any competent court required or permitted to make may be deducted;
- (i) contributions to the Provident Fund in terms of clause 29 of this part of the Agreement and/or deductions for housing loan repayments in terms of a housing loan scheme approved by this Council may be deducted;
- (j) deductions for overalls in terms of clause 27 (3) (a) or (b) may be made;
- (k) where an employer supplies an employee with tea, he may deduct 20c per week from the employee's wages.
- (4) If, owing to the accidental stoppage of machinery, no work is available for an employee, deductions may only be made from the wage of such employee for the actual time lost in excess of two hours.

- (5) (a) Each employee shall be paid an annual bonus on the day of his employer's annual closure in December of each year, equivalent to 2,5% of his total annual basic wage calculated from 1 January to 31 December: Provided that a pro rata share of the bonus shall be paid to an employee who leaves employment before the annual closure.
- (b) The bonus is inclusive of and not additional to any annual bonus paid by an employer.
- (c) For the purposes of calculating this bonus, absences of any nature may not be taken into consideration.

8. PROPORTION OF RATIO OF EMPLOYEES

An employer shall not employ an unqualified employee unless he has in his employ a qualified employee of the same class, and for each such qualified employee not more than three unqualified employees shall be employed: Provided that for purposes of this clause, an unqualified employee receiving not less than the total wage of a qualified employee of his class, shall be reckoned as a qualified employee.

9. HOURS OF WORK

- (1) No employer shall require or permit an employee, other than an employee referred to in subclause (5)-
- (a) to work for more than 42 hours per week;
- (b) to work for more than five days in any one week;
- (c) to work on Saturdays and Sundays;
- (d) to work for more than nine hours, excluding meal intervals in any one day;
- (e) (i) to work before 07:00 or later than 17:30: Provided that this subclause shall not apply to employees engaged as boiler attendants;
- (ii) to work during the rest intervals provided for in this clause or during the lunch hour on any day from Monday to Friday, inclusive.
- (f) to work for more than five hours without a meal interval of at least an hour.
- (2) Notwithstanding the provisions of subclause (1) of this clause, an employer may require or permit an employee to work overtime subject to the provisions of clause 10: Provided that no employer shall require or permit an employee to work more than 13 hours per week overtime in the Magisterial Districts of Bloemfontein, Kimberley and Kroonstad and 12 hours per week in the Magisterial Districts of Parys and Frankfort: Provided further that no employer shall require or permit an employee to work overtime, after completion of his ordinary working hours, for more than one-and-a-half hours on any day, unless he has-
- (a) given notice thereof to such employee before midday;
- (b) provided such employee with an adequate meal before commencing overtime; or
- (c) paid such an employee an allowance of R5,00.
- (3) Rest intervals of not less than 10 minutes, during which no work shall be performed, shall be allowed to each employee not later than two-and-a-half hours after the commencement of the morning work period, and as nearly as practicable in the middle of the afternoon work period, and such intervals shall be regarded as time worked.

Utensils and boiling water for making tea shall be provided by the employer and be made available for the employees at the commencement of each rest interval, and also at 12:30 every day from Monday to Friday, inclusive.

- (4) In addition to the rest intervals stipulated in subclause (3) of this clause, the employees engaged on work on a conveyor belt system shall be given a rest interval of five minutes, which shall be regarded as time worked, after completion of each hour's work.
- (5) **Exclusions:** The provisions of this clause shall not apply to a watchman: Provided that the watchman shall not be required to work for more than-

- (i) 45 hours per week; or
- (ii) six days in any one week:

Provided further that the employer may require his watchman to work on the seventh day of the week and shall pay the watchman in addition to his weekly wage an amount equal to two-sixths of such weekly wage in respect of work done on such seventh day.

(6) **Twilight Shift**

- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:
- (i) Only unemployed people may be recruited for working this shift.
 - (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
 - (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
- (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
 - (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
 - (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.
- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:
- (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
 - (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

10. OVERTIME AND SUNDAY WORK

- (1) Overtime, that is, time worked in excess of the hours specified in clause 9 (1) of this part of the Agreement, may not be worked without the written permission of the Council.

B - 22

- (2) Payment for overtime shall be made at the rate of one-and-a-half times the hourly wage for each hour or part of an hour so worked from Monday to Saturday.
- (3) An employer shall pay an employee who works on a Sunday-
- (a) for less than four hours, an ordinary days' wage;
 - (b) for more than four hours, the greater of-
 - (i) double the employee's rate of pay for the number of hours worked; or double an ordinary day's wage; or
 - (ii) pay the employee remuneration at a rate of not less than one-and-a-half times his ordinary rate of remuneration in respect of the total period worked on such Sunday and grant him within seven days of such Sunday one day's holiday and pay him in respect thereof remuneration at a rate of not less than his ordinary rate of remuneration as if he had on such holiday worked his average ordinary working hours for that day of the week.
- (4) No employee shall be required to work overtime without his consent.
- (5) No employee shall be dismissed or prejudiced in his employment by reason of his refusal to work overtime.
- (6) **Aggregation of Overtime**

For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 9 of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
 - (ii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
 - (iii) time not worked as a result of the employer having declared short time;
 - (iv) time not worked as a result of the employee being on authorised shop steward stewards time off; and
 - (v) the three days family responsibility leave provided for in clause 9 of this part of the Agreement.
- (7) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

11. OUTWORK

No employer in the Industry shall give outwork to be manufactured other than in a workplace registered in terms of clause 12 of this Collective Agreement, nor shall he require or permit any employee to perform any work in the Clothing Industry other than in a workplace provided, equipped, maintained and controlled by the employer.

12. REGISTRATION OF AN EMPLOYER

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of the previous Agreement shall, within seven days of the date on which this part of the Agreement becomes binding on him, furnish to the Secretary of the Council such particulars as are relevant, in the form and manner specified by the Council

- (2) Where an employer carries on business as a partnership, company or close corporation, the particulars required by the Council shall be provided in the form and manner specified by the Council, in respect of each partner, director or member of the business, as the case may be.
- (3) When an employer's business undergoes any of the following changes, the employer shall furnish to the Secretary of the council, a notice of the change in writing setting out full particulars of such change within seven days of its taking place:
 - (a) Change of name;
 - (b) change of address;
 - (c) changes in the composition of its members or partners or directors;
 - (d) the sequestration or liquidation of the business;
 - (e) the transfer or abandonment of the business;
 - (f) the acquisition of another business which is covered by this part of the Agreement;
 - (g) the commencement of any other business covered by this part of the Agreement.

13. PAID HOLIDAYS AND ANNUAL LEAVE

- (1) (a) An employer shall grant to each of his employees, during the month of December or January of each year, annual leave on the following basis:
 - (i) In the case of an employee (other than a watchman) who was, prior to the commencement of the annual leave, in the firm's employ on or before 1 February of any year, and who remained in such employ until 1 December of that year, 15 working days on full pay. No such employee shall be paid less than three weeks' wages as annual leave pay.
 - (ii) In the case of a watchman the same provisions as contained in (a) (i) above shall apply, except that 23 working days' leave shall be granted: Provided that an employee who was absent from work for a continuous period in excess of 12 weeks shall be paid holiday pay in terms of subclause (2) of this clause.
- (b) The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of the employee before the commencement of the period of leave.
- (2) (a) An employee who was employed from 1 February for less than one year from the date of commencement of the previous annual leave period or whose employment terminated before commencement of the annual leave period, provided his employment with the employer endured for a period of not less than four weeks, shall be paid holiday pay calculated on the basis of 1,25 times the daily wage in respect of each completed month of service, inclusive of the leave period.
- (b) The holiday pay due in terms of paragraph (a) shall be paid by the employer not later than the last working day of the employee before the commencement of the period of leave, or if the employee's employment terminates before that date, on the day he leaves the employer's service.
- (3) In determining the period of employment in respect of which holiday pay is to be calculated in terms of subclause (2), the expression "employment" shall be deemed to include any period during which an employee-
 - (a) is absent from work on the instruction or at the request of the employer;
 - (b) is on sick leave, provided a medical certificate for the period or periods of absence has been produced;
 - (c) is on maternity leave, provided a medical certificate to this effect has been produced.
- (4) (a) Every employer shall grant to each of his employees New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day,

B - 24

National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill as paid holidays and no employer shall employ an employee and no employee shall work on these 12 days.

- (b) An employer shall grant to all of his employees who have worked the whole morning period of the Thursday preceding Good Friday, time off from the commencement of the normal interval until the normal closing time and such time lost shall be regarded as time worked: Provided that where an employee is absent on the employer's instructions, he shall be entitled to payment for the Thursday afternoon period preceding Good Friday.

Provided further that if an employee has to work on any public holiday, such employee shall be remunerated at time and a half the ordinary hourly rate for the time so worked, in addition to the entitlement of the day's pay.

- (5) In the event of an employer granting to his employees in terms of subclause (1) of this clause, a leave period which includes the Day of Reconciliation, Christmas Day, Day of Goodwill or New Year's Day, such employer shall pay a full day's pay in respect of each such day to each of his employees in his employ on the commencement of the leave, and to each employee whose contract of service is terminated within the 14 days prior to the commencement of the leave period Provided that the employee concerned was in the continuous employment of his employer for a period of not less than six months immediately prior to the leave period: Provided further that the contract was not terminated by the employee concerned, or that he was not summarily dismissed for any good cause recognised by law as sufficient.
- (6) In the event of New Year's Day, Human Rights Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day or Day of Goodwill falling on a Saturday or a Sunday, the employer shall pay to each of his employees an extra day's pay on the first pay day after such day or when payment for these days is payable in terms of this clause or, alternatively, shall grant the Monday following such public holiday as a holiday and shall pay a day's pay to each of his employees in respect thereof.
- (7) For the purposes of this clause, "day's pay" means the "weekly wage" divided by five, and "full pay" means the "wage" paid immediately prior to the commencement of the holiday leave prescribed by subclause (1).
- (8) Notwithstanding the provisions of subclause (2) an employer may close his workplace on any other three days with the consent of the majority of his employees, and in that event shall not be obliged to pay wages in respect of such days: Provided that he shall afford his employees the opportunity of working in the time lost in respect of any such days, on any day other than a Sunday, at ordinary rates of pay should the majority of his employees so agree: Provided further that an employer shall notify his employees of his intention to close the workplace on such days by means of a notice posted in a prominent place in his workplace at least 24 hours prior to the usual starting time of the first day of closure, and that the Council be notified thereof in writing.
- (9) (a) An employee shall be entitled to six consecutive months' maternity leave, of which five months shall be unpaid and one month paid in terms of clause 32 (1).
- (b) An employee may commence maternity leave-
- (i) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
- (ii) on the date which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
- (c) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (d) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave of six weeks after the miscarriage or

- stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
- (e) An employee shall give an employer notice in writing, unless the employee is unable to do so, of the date on which the employee intends to
- (i) commence maternity leave; and
 - (ii) return to work after maternity leave;
- (f) Notification in terms of subclause (e) shall be given-
- (i) at least four weeks before the employee intends to commence maternity leave; or
 - (ii) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (10) (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.
- (b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer shall offer her suitable alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if-
- (i) the employee is required to perform night work or work that poses danger to her health or safety or that of her child; and
 - (ii) it is practicable for the employer to do so.
- (11) (a) An employer shall grant an employee who has been in his employ for longer than four months and who works for at least four days a week for that employer, three days' unpaid family responsibility leave, which the employee shall be entitled to take-
- (i) when the employee's child is born;
 - (ii) when the employee's child is sick; or
 - (iii) in the event of the death of-
 - (aa) the employee's spouse or life partner; or
 - (ab) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling;
- (b) An employee may take family responsibility leave in respect of the whole or a part of a day.
- (c) Before granting an employee family responsibility leave, in terms of this subclause, an employer may require reasonable proof of an event contemplated in subclause (1) (a) for which the leave was required.
- (d) An employee's unused entitlement to leave in terms of this subclause shall lapse at the end of the annual leave cycle in which it accrues.
- (e) Exclusions: The provisions of this clause shall not apply to a watchman: Provided that a watchman shall be granted four weeks' holiday leave on full pay, plus payment of an amount equal to one-quarter of his weekly wage, during each period of 12 months, employment: Provided further that should such watchman's employment be terminated before such leave is granted, he shall be paid in lieu of such leave two-an-one-fifth times his daily wage in respect of each completed month of employment, calculated from the date of commencement of his employment or from the first pay day after the last 12 months' period in respect of which he was granted four weeks' holiday leave, as specified in this subclause. For the purposes of this subclause, the daily wage of a watchman shall be one-sixth of his weekly wage.

14. TERMINATION OF EMPLOYMENT

- (1) Subject to the provisions of subclause (1) (b) (ii), (iii) and (iv) of this clause! written notice, in the form of Annexure J to this part of the Agreement, of not less than five working days, which for the purposes of this clause shall include paid holidays, to take effect from the working day following that on which it is given shall be given by an employer or an employee to terminate a contract of service:
- (a) Provided that this shall not effect-
- (i) the right of an employer or an employee to terminate the contract of service without notice for any good cause recognised by law as sufficient;
 - (ii) any agreement between the employer and the employee providing for a longer period of notice than one week.
- (b) Provided further that-
- (i) an employer may pay an employee wages for and in lieu of the specified period of notice;
 - (ii) an employee who is working short time may terminate his employment without giving notice;
 - (iii) the first 20 working days, in respect of weekly paid employees, or the first 35 working days, in respect of monthly paid employees, of the period of employment of an employee by an employer shall be deemed to be a trial period (unless otherwise stated in a written agreement), and such employment may be terminated either by the employer or the employee at any time within such trial period by giving 24 hours' notice;
 - (iv) monthly paid employees shall give or be given not less than one calendar month's notice, in writing, to take effect from the first pay day of the month following that in which notice is given.
- (2) An employee laid off during the currency of any period of notice given in terms of subclause (1) of this clause shall receive full pay for the unexpired part of such notice period.
- (3) No employer shall terminate the services of any employee by reason of such employee's
- (a) approaching confinement: Provided that the employee returns not later than six months after the date of confinement leave;
 - (b) absence from work through illness:
Provided that-
 - (i) the employer is notified within 5 working days of the commencement of such illness; and
 - (ii) a medical certificate for the period of absence is provided on the employee's return to work; - (c) absence on leave, the written permission of the employer having been obtained;
 - (d) partial disablement through injury on duty.
- (4) (a) In the event of an employer failing to give notice or permit the employee to work the required notice period, or an employee failing to give and to work the required notice period, the employer shall pay or the employee shall forfeit, subject to the provisions of paragraph (b) of this subclause, an amount equal to the full weekly remuneration which the employee was receiving immediately prior to the date of such termination.
- (b) Subject to the provisions of subclause (5), the employment of an employee who absents himself from work for a period of five consecutive working days without

notifying his employer may be terminated by the employer without notice: Provided that-

- (i) the employer attempts to contact the employee in writing at the last known address supplied by the employee;
 - (ii) the employee shall be allowed to lodge with his employer a written appeal against his dismissal.
- (c) If an employee leaves without notice or is unaccountably absent, the employer shall send his service card to the Bargaining Council not earlier than the sixth nor later than the 11 th day of such absence, together with any wages due in terms of this part of the Agreement, and a statement by the employer detailing circumstances surrounding the employee's absence from work and requesting a refund of the amount to be forfeited in terms of paragraph (a) hereof.
- (5) Subject to the provisions of subclause (4) (a) and (b), an employee who is discharged or leaves without notice during the currency of any period of notice given in terms of subclause (1) of this clause shall receive full pay or shall forfeit such wages for the unexpired period of such notice.
 - (6) 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 13.
 - (7) Subject to the provisions of subclause (3) (b), no notice shall be given during absence on sick leave or confinement leave as provided for in clause 13 (9);
 - (8) Notwithstanding the provisions of subclauses (1), (3) and (4), no employer shall, in terms of the Act, unfairly terminate the services of an employee. Furthermore, for the purposes of determining the length of an employee's employment with an employer, previous employment with the same employer shall be taken into account if the break between the periods of employment is less than one year.

15. PREMIUMS

No premiums shall be charged or accepted by an employer for the training of an employee: Provided that this clause shall not apply in respect of a training scheme to which the employee is legally required to contribute.

16. TOOLS

- (1) Every employer may, at the request of his employees, supply scissors for the purpose of their employment at the price paid therefor by the employer.
- (2) The cost of the scissors may be deducted from the employee's wages in weekly instalments, as mutually agreed upon between the employer and employee.
- (3) The employer shall keep the scissors sharpened and in good order, free of charge.

17. CONTRACTS

- (1) **Existing contracts:**

Any contracts of service in operation at the date of coming into operation of this part of the Agreement or concluded subsequent to such date shall be subject to the provisions of this part of the Agreement.

(2) **Fixed-term contracts:**

- (a) An employer may engage fixed-term contract employees for a specific period and/or until the completion of a specific short-term task.
- (b) Any employee engaged on a fixed-term contract shall be employed subject to the same terms and conditions as prescribed in this Collective Agreement for other employees of the same class/job category.
- (c) Fixed-term contracts shall be reduced to writing and shall stipulate the commencement and termination dates and/or completion date of the contract task.
- (d) Copies of all fixed-term contracts (as well as accompanying exemption application where applicable concluded in the Industry shall be forwarded to the Secretary of the Council, PO Box 1142, Woodstock. 7915, for registration and processing by no later than seven days after commencement of duty of the employee.

18. ENGAGEMENT, TRANSFER AND TERMINATION FORMS

- (1) An employer shall on engaging an applicant for work, require such applicant to produce a service card issued by the Council, which shall be in the form and manner specified by the Council. In the case of an employee who does not possess a service card, the employer shall complete an application for service card form, in the form and manner specified by the Council.
- (2) If during or on completion of the trial period in terms of clause 14 (1) (b) (iii), the contract of service is confirmed, the employer shall, immediately on such confirmation, enter on the service card or application form, the name of his factory, the occupation of the employee, and the date of commencement of employment, and send the card to the Secretary of the Council. within seven days of engagement as provided for in subclause (1) of this clause.
- (3) The Council shall extract such information as may be required from the service card, and return it to the employer with the least possible delay. In the case of an application form, the Council shall issue a service card in respect of the new entrant to the Industry and forward it to the employer. The employer shall retain the service card until the employee leaves his employ.
- (4) Whenever an employer transfers his employee to another grade, in terms of clause 4 (2), he shall, within 14 days from the date of transfer, complete a transfer form as per Annexure A and forward it to the Council. The Council shall, with the least possible delay, acknowledge such transfer notice to the employer.
- (5) On the termination of services of an employee, except in terms of clause 14 (1) (b) (iii), an employer shall supply the employee with his service card, duly completed by the employer, stating the grade or grades in which the employee was employed by the firm, the total weekly wage paid prior to termination and the date of termination.
- (6) The employer shall complete and transmit to the Regional Chamber a record, in the form and manner specified and supplied by the Regional Chamber, of all engagements, terminations, the first or last dates of absences from work for four or more consecutive pay weeks and transfers in occupation of employees in respect of that week: Provided that where in any week no changes have been effected, a "Nil" return shall be submitted.

19. EXEMPTIONS

A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement

may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.

- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation, and in addition, shall set out the following information:
 - (a) The period for which the exemption is sought;
 - (b) the number of employees affected and how many of such employees are members of a registered trade union;
 - (c) the clauses and subclauses of this part of the Agreement from which the exemption is requested.
 - (d) Satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought and the response resulting from such consultations. Such consultations shall include a registered trade union where such union has members employed at the workplace.
 - (e) The demonstrable commercial need of the applicant for the exemption sought.
- (4)
 - (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
 - (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, and in form the applicant of its decision within 45 days from the date of lodgement of the application with the General Secretary. If notification of the decision is not received within this period, the application shall be deemed to have been refused.
 - (c) The Exemptions Committee may call for any further information or submissions it deems relevant from the applicant, prior to making a decision. The period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
 - (d) The Exemptions Committee may, after considering the application in terms of the provisions of this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been refused.
 - (e) Subject to the time period for considering the application as provided in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been refused and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
 - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
 - (g) If the application has been granted or partially granted, the Exemptions Committee

B - 30

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 exemption(s) will be valid;
 - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
 - (iv) the full name of the exempt employer or employee(s).
- (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
- (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred to appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the amount thereof: Provided that such a fee shall be consistent with-
- (i) the cost incurred for the hearing of the appeal; and
 - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall also have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
- (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
- (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee, and where applicable, the Exemptions Board of the following:

- (a) There is a demonstrable commercial need for the exemption.
 - (b) Competitors covered by the Council that are in compliance with the applicable Council Agreements will not be materially prejudiced by the exemption.
 - (c) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor does the application if granted, result in a conflict with the primary objectives of the Act.
 - (d) The exemption will not undermine collective bargaining and labour peace in the Industry.
 - (e) There has been compliance with subclause (3) above.
 - (f) The majority of employees affected at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has put up a compelling case for the exemption.
 - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
 - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability.
 - (d) The terms of the exemption sought, including the period for which exemption is sought
 - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
 - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
 - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
 - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
 - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.

B - 32

- (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
 - (k) What hardship may eventuate to employees in the event of the exemption being granted.
 - (l) Any relevant time limits contained in the Council's constitution and the Act. Any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
 - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.

20. COUNCIL FUNDS

The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.

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

- (1) (a) Every employer shall, on every pay day of each week and from the first pay day of coming into operation of this part of the Agreement, deduct an amount equal to 0.28% of each employees wages per week, calculated at the qualified machinist rate of pay, up to a maximum of R1,95 per week for whom minimum wages are prescribed in this Agreement: Provided that no deduction shall be made from the wages of an employee who has worked for less than 20 hours in the week in which the deductions fall due: Provided further that no deductions shall be made from the holiday pay paid to each employee when the workplace closes in terms of clause 13 (1) of this part of the Agreement.
- (b) An employer shall, in respect to each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute an amount equal to 0.40% of each employees wages per week, calculated at the qualified machinist rate of pay, up to a maximum of R2,11 per week.
- (2) (a) The employer shall pay the total amounts so deducted, together with his contributions in terms of subclause (1) (b) above, to the Secretary of the Council, P O Box 1142, Woodstock, 7915, within seven days from the end of the month in which the deductions fall due and such payment shall be accompanied by a completed copy of Annexures E and F, in the case of employers in the Magisterial Districts of Bloemfontein, Frankfort, Kroonstad, Kimberley, Parys and Vredefort.
- (b) Where an employer has failed to deduct contributions from the wages of employees, he shall not be permitted to deduct arrear contributions but shall make good these contributions himself.

- (c) Should any amount due in terms of this clause not be received by the Council by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum:

Provided that the Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council, the interest may accrue to the general funds of the Council.

21. MEDICAL BENEFIT SOCIETY

- (1) The Free State and Northern Cape Clothing Industry Medical Benefit Society, (hereinafter referred to as the "Society). originally established on 23 March 1967 in terms of Government Notice No. R 379, is hereby continued.
- (2) Every employer in the Magisterial Districts of Bloemfontein, Frankfort, Kimberley, Kroonstad, Parys and Vredefort shall. On the pay day of each week, deduct R7,00 from the wage of each of his employees for whom minimum wages are prescribed in this part of the Agreement.
- (3) The employer shall pay the total amount so deducted, together with an amount of R16,94 to be contributed by him and furnish to the Secretary of the Council P.O. Box 1142, Woodstock, 7915, such particulars as are relevant, in the form and manner specified by the Council.
- (4) Where an employer has failed to deduct contributions from the wages of employees, he shall not be permitted to deduct arrear contributions but shall make good these contributions himself.
- (5) Should any amount due in terms of this clause not be received by the Council by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council the interest may accrue to the general funds of the Council.
- (6) On expiry of this part of the Agreement by effluxion of time or cessation for any other cause, the Society shall continue to be administered by the Management Committee, and in the event of a subsequent agreement providing for the continuation of the Society not being negotiated within one year from the date of expiry of this part of the Agreement, or the Society not being transferred within such period to a society constituted for the same or a similar purpose, the Society shall be liquidated by the Management Committee.

22. EXTRACT FROM WAGE REGISTERS

Every employer shall forward to the Secretary of the Council, P.O. Box 1142, Woodstock, 7915, copies, in triplicate of his wage register in the form and manner specified by the Council, not later than one week after the first pay day in every quarter.

23. TRADE UNION LABOUR

A. EMPLOYMENT OF TRADE UNION LABOUR

- (1) No employer who is a member of an employers' organisation (which is a party to the Council), shall continue to employ an employee -
 - (a) who, while being eligible for membership of the union, is not a member of the union as at the date of coming into operation of this part of the Agreement; or

B - 34

- (b) who does not become a member of the trade union within a period of 90 days from such date.
 - (c) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the union or employers' organisation or who have been refused membership of or expelled from the union or employers' organisation.
- (1) Every employer shall forward all deductions made from the remuneration of employees in respect of union membership fees to the Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, within seven days from the end of the month in which the deductions fall due. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers by not later than the end of the month in which the fees were received.
- (2) For this part of the agreement no union membership subscriptions may be -
- (a) paid to a political party as an affiliation fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.
- (4) Provided that the provisions of this clause will not be applicable to:
- (a) clerks; or
 - (b) any employee to whom, in the opinion of the Regional Chamber, membership of the trade union has been refused without good and sufficient cause and the applicant has applied to the Council or Regional Chamber within 30 days of such refusal for exemption from the operation of this sub-clause; or
 - (c) an immigrant during the first five years after the date of his/her entry into the Republic of South Africa, provided that if any immigrant has at any time after the first 90 days of commencement of his/her employment in the Industry refused any invitation from the trade union to become a member of it, the provisions of this clause shall immediately come into operation; or
 - (d) a casual employee.
- (5) Provided further that the provisions of section 26(3)(c) of the Act shall be observed by the parties to the Council and to whom this clause is applicable.

B. RIGHTS AND ACCESS TO PREMISES

- (1) Any office bearer or official of a representative trade union shall be entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve members' interests.
- (2) A representative trade union shall be entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union shall be entitled to vote at the employer's premises in any election or ballot contemplated in the union's constitution.
- (4) The rights conferred by this clause shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.

- (5) The authorised person or persons shall notify the employer or his representatives of his intention to visit the workplace.
- (6) The trade union shall have reasonable access to facilities at the workplace, including the use of the telephone, notice boards and a venue for trade union representative meetings, where such facilities are available, subject to the following:
 - (a) Such facilities shall be available during the normal working hours of the business and, while normal output is maintained, including lunch and tea breaks.
 - (b) The granting of facilities shall be subject to prior agreement from management, which agreement shall not unreasonably be withheld, and the facilities shall be used for industry-related matters. Such industry-related matters shall be defined by the Council from time to time.
 - (c) The scale of facilities shall be subject to the individual circumstances of a workplace.
- (5) The trade union shall be entitled to distribute the union newspaper at the workplace.
- (6) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.
- (7) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

C. TRADE UNION REPRESENTATIVES-TIME OFF

- (1) Representatives from the representative trade union shall be granted paid time off on the following basis:

Ten days per annum per trade union representative, pooled for each workplace and to be divided between various trade union representatives at the discretion of the Union: Provided that

 - (a) all such leave shall be subject to the operational requirements of the workplace;
 - (b) in the case of employers employing five or fewer employees, the union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause;
 - (c) in the case of employers not referred to in paragraph (b), the union shall give the employer one day's notice of the activity for which it seeks time off in terms of this clause; and
 - (d) all leave granted in terms of this clause shall be used to attend bona fide industry-related trade union activities.

D. SACTWU EDUCATION BURSARY SCHEME

- (1) For the purposes of establishing a SACTWU Educational Trust, every employer to whom this part of the Agreement applies, shall each week contribute 31 cents for each employee in his workplace. The moneys so paid shall be utilised by the SACTWU Education Bursary Scheme to award bursaries to all employees and their children in the Industry to further their education.
- (2) The total amount so contributed per month shall be submitted to the Secretary of the Council, PO Box 1142, Woodstock, 7915, within 10 days of the month in which the contributions fall due. The Secretary of the Council shall within 15 days of receipt forward such contributions to the General Secretary of the trade union, together with an analysis of the amounts received from employers, after withholding a collection fee as determined and agreed upon from time to time by the parties to the Council.

E. SACTWU HIV/AIDS PROJECT

- (1) There is hereby established an HIV/AIDS Project, known as the SACTWU HIV/AIDS Project.
- (2) Every employer to whom this part of the Agreement applies shall each week for each employee in his employ contribute an amount of 45 cents to the SACTWU HIV/AIDS Project. The amount shall be submitted to the Secretary of the Council, P O Box 1142, Woodstock, 7915, within seven days of the end of the week in which the contribution fall due.
- (3) The total amount so collected by the Council shall be transferred to the SACTWU Finance Department, P.O. Box 18359, Dalbridge, 4014, on a quarterly basis.

F. TRADE UNION AGENCY SHOP

- (1) **Scope-** Agency fees will apply to employees who –
 - (a) are not members of the trade union party, but are eligible for membership thereof;
 - (b) are not bound by the provisions of the closed shop clause; and
 - (c) fall within the scope of this Agreement this part of the Agreement.
- (2) **Union membership:** Employees are not compelled to become members of the trade union party.
- (3) **Agency fee deductions:** Every employer to whom this clause applies shall:
 - (a) deduct from the wages of an employee an amount equivalent to the union subscription; and
 - (b) pay such monies to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, within 14 days of having made such deductions.
 - (c) deduct the agency fee from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be –
 - (a) paid to a political party as an affiliate fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

24. POWERS OF DESIGNATED AGENTS

- (1) 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 part of the Agreement in terms of clause 33 of this part of the Agreement or the Disputes Procedure in terms of clause 34 of this part of the Agreement may
 - (a) subpoena for questioning any person who maybe 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 designated agent or to 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 to be there;
 - (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;
 - (e) inspect and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the designated agent.
- (2) A subpoena issued for any purpose referred to in subclause (1) shall be signed by the Secretary of the Council and shall
- (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.
- (3) The written authorisation referred to in subclause (1) (d)-
- (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 14 of the Constitution of the Republic of South Africa, 1996, and then only on the application of the designated agent 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;
 - (b) in all other cases, may be given by the Secretary of the Council.
- (4) The owner or occupier of any premises that the designated agent is authorised to enter and inspect, and every person employed by that owner or occupier, shall provide the facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.
- (5) The designed agent shall issue a receipt for any book, document or object seized in terms of subclause (4).
- (6) 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.

B - 38

- (7) The designated agent shall pay the prescribed witness fee to each person who appears before him in response to a subpoena issued in terms of section 208 of the Act, where such fee has been specified by the Minister of Labour or, in the absence of such fee, as may be determined by the Council from time to time.
- (8) 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 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 the designated agent so requires;
 - (d) by refusing to answer any questions fully and to the best of that person's knowledge and belief subject to subclause (6);
 - (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 the designated agent in performing any function conferred by or in terms of the Act;
 - (g) if the person insults, disparages or belittles the designated agent, or prejudices or improperly influences an investigation or improperly anticipates the designated agent'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.
- (9) The designated agent may, on, recommendation of the Council, refer any contempt to the Labour Court for an appropriate order.

25. PROHIBITION OF EMPLOYMENT OF CHILDREN AND OF FORCED LABOUR

- (1) No person shall employ a child
- (a) who is under 15 years of age; or
 - (b) who is under the minimum school-leaving age in terms of any law, providing this is 15 years of older.
- (2) No person shall employ a child in employment
- (a) that is inappropriate for a person of that age;
 - (b) that places at risk a child's well-being, education, physical or mental health, or spiritual, moral or social development.
- (3) Subject to the Constitution of the Republic of South Africa, 1996, all forced labour is prohibited.
- (4) No person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subclause (1).
- (5) A person who employs a child in contravention of subclauses (1) to (4) commits an offence.

26. EXHIBITION OF AGREEMENT

Every employer shall keep exhibited in his workplace, in a place readily accessible to his employees, a legible copy of this Collective Agreement in one official language.

27. OVERALLS

- (1) An employer shall issue within four weeks of the commencement of employment of an employee, two new overalls to such employee and shall issue to each and every employee in his employment two new overalls every 18 months on or before 1 January or 1 July, as the case may be.

An employee to whom such overalls have been issued in terms hereof shall be required to wear such overalls during all working hours, and shall be responsible for the good condition and laundering of such overalls away from the workplace where he is employed: Provided that an employer may launder his overalls and withdraw the right of an employee to take such overalls away from the workplace where he is employed: Provided further that nothing contained in this subclause shall be so construed as to reduce the obligations imposed on any employer in regard to protective clothing and appliances as laid down in the Occupational Health and Safety Act, 1993, or the regulations published under that Act.

An employee to whom such overalls have been issued in terms hereof shall be required to wear such overalls during all working hours, and shall be responsible for the good condition and laundering of such overalls away from the workplace where he is employed: Provided that an employer may launder his overalls and withdraw the right of an employee to take such overalls away from the workplace where he is employed: Provided further that nothing contained in this subclause shall be so construed as to reduce the obligations imposed on any employer in regard to protective clothing and appliances as laid down in the Occupational Health and Safety Act, 1993, or the regulations published under that Act.

- (2) Ownership of any overall issued to any employee shall be ceded to such employee 12 months after the date of issue of such overall.
- (3) The employer shall be entitled to deduct the following amounts in respect of overalls from an employee on termination of employment:
- (a) R7,50 per overall if such termination occurs within six months after the date of issue of overalls;
 - (b) R5,00 per overall if such termination occurs within seven to twelve months after the date of issue of the overalls.
- (4) Should an employer fail to provide his employee with an overall or overalls as specified in subclause (1) within 60 days of the due date of issue and having been given two weeks written notice by the Council, such employer shall be liable to pay to his employee, as a penalty, an amount equal to R1,50 per overall not issued in respect of every period of 30 days that has lapsed from the due date of issue of such overall or overalls.
- (5) If an employee fails to wear an overall as specified in subclause (1), the employer shall have the right to advise such employee that failure to appear at work with an overall on the following day will result in a new overall being issued, in such case an amount equal to the cost of such overall, but not exceeding R15,00, may be deducted from the wage due to such employee on the first pay day following the issue of such overall.

28. SAFEGUARD OF WORKERS' EARNINGS

- (1) Every employer shall, within two months of the date of coming into operation of this Collective Agreement or within two months of the coming into operation of the workplace of a new factory, give a bankers' or other guarantee, acceptable to the Council, payable on demand in the event of the employer's insolvency or otherwise.
- (2) Such guarantee shall be used to cover the payment of all contributions due to the Council and all benefit funds established in terms of this part of the Agreement and the payment of holiday pay and wages due to his employees: Provided that the amount so guaranteed

shall be an amount equal to two months' contributions for all his employees and three weeks' wages for each and every employee in his employ.

29. PROVIDENT FUND

- (1) The Provident Fund for the Clothing Industry (Free State and Northern Cape), (hereinafter referred to as the "Northern Chamber Fund"), originally established on the 1st pay day in September 1971 in terms of Government Notice No' R. 321 dated 1 March 1974, is hereby dissolved.
 - (a) The assets and the liabilities of the Fund on that date will be transferred to the Provident Fund for the Clothing Industry (Northern Areas), to be renamed to the Provident Fund for the Clothing Industry (Northern Chamber) on 1 April 2008, (hereinafter in referred to as the Northern Chamber Fund) and the Fashion Industry Protection Fund, each split between the two funds as recommended by an Actuary appointed for this purpose, and agreed to by the Administrative Committee, in consultation with their advisor;
 - (b) If the actual transfer of assets (and therefore liabilities) takes place on a date other than 1 April 2008, the liabilities shall be increased by interest as recommended by the actuary and approved by the Administrative Committee, and the full value of assets as at 1 April 2008, with further investment returns to the date of transfer, less any expenses, shall be transferred;
 - (c) The Fund (the Provident Fund for the Clothing Industry (Free State and Northern Cape)) shall then be known as the Former Fund, where appropriate;
 - (d) The Northern Chambers Fund shall be read to be the Fund in the balance of these Rules, from 1 April 2008, where appropriate;
 - (e) The administration and management of, and contributions and benefits paid by the Northern Chambers Fund will be governed by a collective agreement to be gazetted and an agreed set of Rules for that fund, the Rules ultimately being registered with the Registrar of Pension Funds in terms of the Pension Funds Act. However, the provisions of that Fund are briefly summarised in sub-clause (2);
 - (f) For each member of the Fund, the balance held in that member's account in the Fund on 1 April 2008 will be transferred to an account established for that member in the Northern Chambers Fund;
 - (g) The mechanism used for the dissolution of the Fund is the Transfer of Fund provision contained in sub-clause 30(2) in this Part of main agreement. The transfer of assets and liabilities between this provident fund and the Fashion Industry Protection Fund is a once-off transfer;
 - (h) A notice to the Registrar of Labour should be given in terms of a Section 14 transfer. The Registrar may gazette the notice of dissolution of the two funds; and
 - (i) Any requirements of a fiscal nature shall be fulfilled.
- (2) The Fund (and the Northern Chambers Fund with effect from 1 April 2008, upon which date all below will cease in the Fund, given the full transfer of the Fund to that fund and the Clothing Industry Protection Fund, and read as such) shall consist of:

The purpose of the Fund shall be the provision of benefits to employees and the Fund shall no longer provide the benefits to employees. The administration and management of, and contributions and benefits paid by the Fund will be governed by the provisions of this part of the agreement, and any Rules of the Fund (agreed by the Administrative Committee), and reduced to writing.

- (2) The Fund (and the Northern Chambers Fund with effect from 1 April 2008, upon which date all below will cease in the Fund, given the full transfer of the Fund to that fund and the Clothing Industry Protection Fund, and read as such) shall consist of:

- (a) contributions paid into the Fund in terms of subclause (3) of this clause;
 - (b) interest derived from the investment of any moneys of the Fund;
 - (c) any other sums to which the Fund may become entitled or which may be donated to the Fund;
 - (d) any moneys held in trust by the Council for the purposes of the Fund.
 - (e) Any values transferred as a result of an amalgamation, merger, or a bulk transfer of assets and a liabilities as a result of sub-clause 1 (5) above;
 - (f) Any values transferred from any other retirement provision, with the approval of the Administrative Committee (or its successor) subject to meeting the fiscal requirements by an individual member.
- (3) Contributions:
- (a) Every employer shall on the pay day of each week deduct from the wage of each employee (hereinafter referred to as "contributor") to whom this clause applies and who has worked for at least 20 hours in the week in which the deduction falls due, an amount equal to 5,75% of the basic weekly wage of the contributor. The employer shall add thereto an amount equal to 6,5%, being the employer's contribution in respect of each employee. The total amount so deducted from the wages of his employees together with the amount contributed by the employer shall be paid to the Secretary of the Council, P.O. Box 1142, Woodstock, 7915, seven days from the end of the month in which the deductions fall due, such particulars as are relevant in the form and manner specified by the Council.
 - (b) Should any amount due in terms of this clause not be received by the Council by the seventh day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum. The interest received shall be added to the interest income of the Fund and form part of the general investment returns of the Fund.
- (4) Benefits (subject to the transfer of all benefit entitlement to the Northern Chambers Fund upon the merger and dissolution of the Fund):
- (a) The Fund shall pay benefits in the event of a member leaving the Fund by withdrawal, retrenchment, death, retirement or ill-health, in accordance with the Rules of the Fund.
 - (b) There shall be no waiting period for payment of benefits, nor shall a vesting scale or forfeiture rules apply.
 - (c) Notwithstanding anything to the contrary in the Rules of the Fund, the death benefit provided to metro members will be R10 000, plus the value of their account in the Fund. The benefit to non-metro members will be limited to their member share.
 - (d) The Administrative Committee may augment the members share of all members of the Fund by the declaration of a bonus, subject to confirmation from an actuary that the bonus will not place the Fund in a financially unsound position.
 - (e) On 1 April 2008 the severance benefit offset as described in sub-clause 31(4) shall cease, and a value is to be calculated by the Actuary and recommended to the Administrative Committee as the amount which gives recognition to the expected present value of the severance benefit offset that the employer would have enjoyed had the benefit not been discontinued. Upon acceptance of the recommendation by the Actuary, this amount will be transferred to the account established in the Fashion Industry Protection Fund for the employer of that member, to be dealt with in accordance with the provisions of this agreement that relates to that fund.
 - (f) On 1 April 2008 the enhanced Provident Fund benefit at retirement due in terms of the Rules of the Fund shall cease, and a value is to be calculated for each member

B - 42

by the Actuary and recommended to the Administrative Committee as the amount which gives recognition to the expected present value of the enhanced retirement benefit that the member may have enjoyed had he reached retirement, and the benefit not been discontinued. Upon acceptance of the recommendation by the Actuary, this amount will be added to the members share of each active member of the Fund. For any dormant member who has reached retirement age, that dormant member shall be assumed to retire on that date, and have their benefit enhanced appropriately.

(5) Fund Accounts:

The Administrative Committee may, upon advise from their advisors, establish such accounts in the Fund as may be deemed appropriate to ensure the sound ongoing functioning of the Fund, and may credit such amounts to those accounts at establishment as their advisors deem appropriate, subject to the establishment of the accounts with these recommended amounts not placing the Fund in a financially unsound position. It is required that the Rules of the Fund reflect these reserve accounts, and specify the provisions for the operation of these accounts. These reserve accounts must at all times be operated in compliance with any applicable legislation.

(6) Members of the Fund (and the Northern Chambers Fund with effect from 1 April 2008, upon which date all members and their benefit entitlements of the Fund transfer to that fund, and read as such) shall consist of:

- (a) Active members, for whom contributions are made on a regular basis;
- (b) Inactive members, who are currently dormant in the Fund, because they are not currently employed in the industry as defined in Clause 3, but who are expected to return to the industry; and
- (c) Unclaimed members who last paid a contribution to the Fund more than six months ago, are no longer employed in the industry, and have not come forward to claim their benefit in the Fund, except that, where the Unclaimed Members of the Former Fund are transferred to the Northern Chamber Fund on 1 April 2008, and become Unclaimed Members of that fund on that date, any tax obligations which lay with the Former Fund in relation to these Unclaimed Members are transferred to that Fund.

30. ADMINISTRATION AND INTERPRETATION OF AGREEMENT

- (1) The Council shall be the body responsible for the administration of this Collective Agreement and may give expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.
- (2) Notwithstanding anything to the contrary in this Part of the Agreement, the Council or Regional Chamber may formally dissolve any funds established or constituted by the Council for the benefit of the employees of the Region, subject to the following:
 - (a) Such dissolution may take the form of a transfer, merger, amalgamation or split;
 - (b) On the dissolution date, all contributions to the fund shall cease, and accrual of benefits shall terminate;
 - (c) On the dissolution date, all the cash, assets and liabilities, members and unclaimed benefits, rights, and benefit obligations in terms of that clause / those clauses of the agreement / and Rules that govern that fund are transferred to another fund/s and / or society duly constituted for substantially the same purpose or to give the same effect as the fund being dissolved;

- (d) In the event of such decision, all amounts standing to the effect to the personal credit of stakeholders of the fund being dissolved shall be transferred to their credit under the new fund/s and / or society, and the benefits due to such stakeholders shall not be changed in any way by virtue of such transfer, except where specifically provided for by agreement by the parties;
- (e) Notice of the dissolution of the Fund shall be provided to the Registrar: Labour, who shall gazette such notice, and such further regulatory action as is required shall be complied with; and
- (f) Any requirements of a fiscal nature shall be fulfilled.

31. SEVERANCE PAY

- (1) An employer shall 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: Provided that the previous employment with the same employer shall be taken into account if the break between the periods of employment is less than one year.
- (2) An employee, who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, shall not be entitled to severance pay in terms of subclause (1).
- (3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable in terms of this part of the Agreement.
- (4) Until 1 April 2008, where an employee aged 50 years or older, subject to sub-clause (5) below, is retrenched, such employee shall receive the stipulated enhanced Provident Fund benefits due in terms of the rules (if any) read the constitution of the fund. With effect from 1 April 2008, the benefit enhancement will cease, as described in sub-clause 4 (f) above. Until 1 April 2008, the employer's liability in respect of retrenchment benefits for such employee shall be limited to the payment of the difference between the said enhanced Provident Fund benefit and the amount of severance pay reflected in sub-clause (1) above where the enhanced Provident Fund benefit is less than the severance pay. With effect from 1 April 2008, the employer's liability in respect of retrenchment benefits will the amount of severance pay reflected in sub-clause (1) above. However, to the extent that the employer is compliant, the employer may claim an offset from the Fashion Industry Protection Fund as is provided for in sub-clause 35 (21).
- (5) Where an employee reaches the stipulated retirement age of 55 years or older, the employer shall have no liability for retrenchment pay.

32. MATERNITY BENEFITS

- (1) Subject to clause 13 (9) (a) of this part of the Agreement, the Medical Benefit Society shall pay one month's wages (4,33 weeks' wages) to an employee going on maternity leave: Provided that such employee has one or more years' service with the same employer and a medical certificate is produced. An employee may take up to 6 months' maternity leave, but may return earlier on giving two weeks' notice to the employer of her intention to return to work.
- (2) A substitute employee may be employed in the place of a person on maternity leave for the duration of the maternity leave. Such substitute employee's employment may be terminated by giving the required notice on the return of the employee who went on maternity leave.

33. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT

- (1) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement. If, whether through its own investigations or through any other source, it appears as if the provisions of this part of the Agreement have been breached then the following procedure shall apply to enforce compliance:
- (a) The Council shall request a designated agent to investigate the alleged breach and/or refer the matter to the Council.
 - (b) If, upon completion of the investigation, the designated agent has reason to believe that this part of the Agreement has been breached, the designated agent may endeavour to secure compliance with the Agreement through conciliation.
 - (c) At the end of the conciliation process the designated agent shall submit a report to the Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this part of the Agreement through conciliation and the outcome thereof.
 - (d) Upon receipt of the report, the Secretary of the Council may
 - (i) require the designated agent to make further investigations; or
 - (ii) refer the matter to arbitration in terms of this part of the Agreement; or
 - (iii) take such other steps as may be deemed reasonable.
 - (e) If the Secretary of the Council decides to refer the matter to arbitration, he shall appoint an arbitrator to hear and determine the alleged breach of this part of the 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 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/her 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/she deems appropriate and where the Act provides for such an order to be made or for the Council to recover its costs of providing the arbitration service:
 Provided that where the Council's accredited conciliator has made an advisory award in terms of clause 34 (3) (c) (iii) 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;
 - (ab) proof presented that such party has been notified of the proceedings, and notice of the arbitration proceedings 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 part of the Agreement.
- (vi) vary, rescind or amend any arbitration award made by him or any other arbitrator on good cause shown, 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, 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 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 Labour Relations Act.

34. DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
 - (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
 - (b) The Council shall, from time to time, adopt, by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.
 - (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same rights, powers and obligations as the Council.

(2) Accreditation

- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
- (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

(3) Panel of conciliators, arbitrators and senior arbitrators

- (a) The Council shall appoint:
 - (i) a panel of conciliators, for the purpose of conciliating disputes;
 - (ii) a panel of arbitrators, for the purpose of determining disputes;
 - (iii) a panel of senior arbitrators, for the purpose of determining disputes where
 - (aa) the nature of the questions of law raised by the dispute;
 - (bb) the complexity of the dispute;
 - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
 - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
 - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.
 - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
 - (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' lists shall 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 General

Secretary of the Council shall draw the name of the remaining appointee.

- (d) The arbitrators and senior arbitrators are to be appointed to the relevant 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 arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3)(d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
 - (i) for serious misconduct; or
 - (ii) owing to incapacity; or
 - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3)(c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3)(i), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

(4) *Dispute involving non-parties to the Council*

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council, shall be resolved by the Council in accordance with the following procedure-

(a) *Referral and conciliation of disputes:*

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the

B - 48

written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.

- (iv) The conciliator may, during conciliation proceedings:
 - (aa) mediate the dispute;
 - (bb) conduct a fact-finding exercise; and
 - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4)(a)(iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

(b) Adjudication of disputes referred to the Council for arbitration:

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:
 - (aa) the Act requires that the dispute be arbitrated; or
 - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) 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 the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to:
 - (aa) give evidence;

- (bb) call witnesses;
- (cc) question the witnesses of any other party;
- (dd) address arguments to the arbitrator;
- (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.
- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord, and without limiting the generality thereof, 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;
 - (bb) the award is ambiguous or contains an obvious error or omission;
 - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

(5) Disputes involving parties to the Council -

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about

B - 50

the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to subclause 5 (d) below.

- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

(6) Compliance procedure and enforcement of collective agreements by Council -

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
- (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber;
- (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by the Council, where these exist, by-
- (aa) publicising the contents of the agreement;
- (bb) conducting inspections;
- (cc) investigating complaints;
- (dd) endeavouring to secure compliance with the agreement through conciliation; or
- (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
- (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
- (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
- (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.

- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclause 4(b)(v) to (4)(b)(xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
 - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
 - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
 - (cc) charging a party to the arbitration an arbitration fee;
 - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
 - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
 - (ff) any award contemplated in section 138(9) of the Act;
 - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of subclause (6) shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure shall stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

(7) Non-Compliance

- (a) Outsourcing to non-compliant companies shall not be permitted in the industry.
- (b) The parties shall enter into agreements with all Provincial and Local governments which shall have the effect that their sourcing from the Industry shall include a requirement to only source from companies which hold a valid Certificate of Compliance from the bargaining council.

(8) Compliance Promotion

- 8.1 All current non-compliant companies which meet a minimum of 80% of the party-to-party *negotiated wage rate* for current employees, shall be regarded as level B compliant, subject to sub-clause 8.2 below.
- 8.2 All companies described in 8.1 above shall achieve 100% wage compliance within a period of 18 months from 1 September 2012, in 6 monthly equal increments, failing which full compliance enforcement including the execution of writs shall apply to them.
- 8.3 The arrears of non-compliant companies shall be ring-fenced in a 'suspense account' at 100% of the verified arrears value and a written time-bound repayment plan agreed with the bargaining council. They should also sign a legally enforceable acknowledgement of debt.
- 8.4 The current policy that allows for a maximum of 6-months as a repayment period for arrears shall be amended, to allow for a maximum eighteen (18) months repayment period with effect from 1 November 2012.
- 8.5 The arrears will become payable in full should the employer become non-compliant, or default on the repayment plan at any time in future, unless otherwise agreed by the parties.
- 8.6 At every future meeting of the National Bargaining Council, each party shall make one practical concrete suggestion on how to further promote compliance in the industry.
- 8.7 The National Bargaining Council General Secretary shall have unfettered authority to serve any writ of execution upon any employer who fails to become compliant in terms of the new compliance provisions envisaged in this agreement, unless the parties agree otherwise.
- 8.8 Nothing in this agreement shall have the effect of downward migration of conditions of employment for any current employee.
- 8.9 The Trade Union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of this agreement.

35. INDUSTRY PROTECTION FUND

- (1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a Fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Regional Chamber, which programmes are aimed at protecting the Industry in the Northern Chamber of the Council, and jobs within it by improving its competitiveness in the fashion industry.
- (3) The Fund shall commence on 1 July 2001 and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of this employees for whom wages are prescribed in this part of the Agreement, and amount of 11 cents: Provided that no deductions shall be made from the wages of any employee who has worked less than 20 hours in the week in which the deduction falls due.

- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of subclause (4), contribute an amount of 14 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded by the employer to the Regional Secretary of the Regional Chamber, within seven days from the end of the week in which the deductions fall due.
- (7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.

This account shall be administered by the Regional Chamber.

- (8) The moneys so collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in subclause (2):
 - (a) 'Buy Local' campaigns;
 - (b) combating customs fraud and illegal imports;
or for such other strategies as meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Free State and Northern Cape Clothing Manufacturers' Association (FSNCCMA) become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in subclause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber and be subject to approval by the Registrar: Labour.
- (10) The Fund's moneys shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the FSNCCMA is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the FSNCCMA, as the case may be, may request confirmation in advance by the Regional Chamber in this regard.
- (12) No moneys of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the FSNCCMA and the Regional Chamber have signed a written agreement, acceptable to the Registrar: Labour, to secure compliance with the provisions of the Fund as set out herein.
- (13) Any interest that is earned on Fund moneys at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the FSNCCMA shall, annually, by the second month of the Regional Chamber's financial year, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan shall be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the Parties will be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he is satisfied that the expenditure-
 - (a) is in terms of the approved plan;

B - 54

- (b) is clearly classified by strategy, activity and the nature of the expense; and
- (c) has been authorised by the Regional Organising Secretary or National Organising Secretary of SACTWU, or the Executive Director of the FSNCCMA.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure shall be presented to the Regional Chamber for approval prior to payment.

- (16) Any expenses that have been incurred by SACTWU or the FSNCCMA for unauthorised purposes or activities and for which SACTWU or the FSNCCMA, have been paid or reimbursed, may be recovered by the Regional Chamber from SACTWU or the FSNCCMA, as the case may be.
- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the FSNCCMA shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund.
- (19) In the event that there is a disagreement between the parties as to whether any activity or expenditure or proposed activity or expenditure falls within the objects of the Fund, either party may refer a dispute in this regard of conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.
- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

36. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2014: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 September 2013.
- (2) To parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

37. ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) The Council shall conduct a survey on the extent and type of contract work in the clothing industry.
- (2) Every employer shall complete a questionnaire as approved by the Council.

- (3) All employers shall be required to cooperate with the survey.

38. PRODUCTIVITY

The Productivity Scheme which was agreed to is:

Contained in Annexure B.

- (1) The bargaining council shall establish a dedicated productivity unit to promote productivity issues in the industry, as part of the NBC's value-added services.
- (2) The bargaining council shall commission a feasibility study for the establishment of a training institute similar to the previous Clothing Industry Training Board (CITB), to be operated under the auspices of the bargaining council as part of the NBC's value-added services.
- (3) Absenteeism
 - (i) The memorandum of Understanding as concluded between the parties on 14 June 2007 and implemented shall remain in effect for the duration of the Agreement only.
 - (ii) Where companies' have introduced the productivity scheme as per the provisions of the absenteeism MOU, such schemes are extended for the duration of this agreement, subject to plant level agreements entered into and signed off.

39. HIV/AIDS

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment as set out in Annexure A to this agreement shall be policy in the industry.

World International HIV/AIDS Day

The industry acknowledges the importance of creating awareness of the HIV/AIDS pandemic. To this end, employers are encouraged to grant employees on World International HIV/AIDS Day thirty minutes paid time off to participate in awareness activities agreed to at industry level.

40. CONTRACT EMPLOYEES

Contained in Annexure D.

41. WORKING IN ARRANGEMENTS

Employees shall be permitted to work in the time lost due to strike action incurred during the September / October 2009 protected wage strike at normal rates of pay, provided that this is agreed to at plant level and further provided that where agreed, such employees shall be offered a loan equal to between one week and two weeks' wages, deductible from their wages in equal weekly amounts over a 10 week period.

ANNEXURE A**CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS
AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING
INDUSTRY OF SOUTH AFRICA****1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:
 - eliminating unfair discrimination in the workplace based on HIV status;
 - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
 - promoting appropriate and effective ways of managing HIV in the workplace;
 - creating a balance between the rights and responsibilities of all parties.

2. OBJECTIVES

- 2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
 - (i) creating a non-discriminatory work environment;
 - (ii) dealing with HIV testing, confidentiality and disclosure;
 - (iii) providing equitable employee benefits;
 - (iv) dealing with dismissals; and
 - (v) managing grievance procedures.

- 2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:
- (i) creating a safe working environment for all employers and employees;
 - (ii) developing procedures to manage occupational incidents and claims for compensation;
 - (iii) introducing measures to prevent the spread of HIV;
 - (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
 - (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:
- (i) between employers, employees and the trade union in the workplace; and
 - (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

3. POLICY PRINCIPLES

- 3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5 Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

4. APPLICATION AND SCOPE

- 4.1. All employers and employees within the clothing manufacturing industry, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this code, the term "workplace" should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.
- 4.3. This Code, however, does not impose any legal obligation in addition to those in the Employment Equity Act, the Labour Relations Act and this code, or in any other legislation referred to in the Code.
- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

5. LEGAL FRAMEWORK

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:
- (i) Employment Equity Act, No. 55 of 1998;
 - (ii) Labour Relations Act, No. 66 of 1995;
 - (iii) Occupational Health and Safety Act, No. 85 of 1993;
 - (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
 - (v) Basic Conditions of Employment Act, No. 75 of 1997; and
 - (vi) Medical Schemes Act, No. 131 of 1998.
 - (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.
- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.
- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.
- 5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.
- 5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.
- 5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.
- 5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).
- 5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.
- 5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.
- 5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].

5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.

5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT

6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:

- (i) recruitment procedures, advertising and selection criteria;
- (ii) appointments, and the appointment process, including job placement;
- (iii) job classification or grading;
- (iv) remuneration, employment benefits and terms and conditions of employment;
- (v) employee assistance programmes;
- (vi) job assignments;
- (ix) training and development;
- (x) performance evaluation systems;
- (xi) promotion, transfer and demotion;
- (xiii) termination of services.

6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:

- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
- (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
- (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
- (iv) providing support for all employees infected or affected by HIV and AIDS; and
- (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE

7.1. HIV Testing

7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

7.1.2. Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree

to waive the protection in the section. This issue has not yet been decided by the courts.^{1[1]}

7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out in item

7.1.4. Authorised testing

Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:

- (i) during an application for employment;
- (ii) as a condition of employment;
- (iii) during procedures related to termination of employment;
- (iv) as an eligibility requirement for training or staff development programmes;
- and
- (v) as an access requirement to obtain employee benefits.

7.1.5. Permissible testing

(a) An employer may provide testing to an employee who has requested a test in the following circumstances:

- (i) As part of a health care service provided in the workplace;
- (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
- (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.

(b) Furthermore, such testing may only take place within the following defined conditions:

- (i) At the initiative of an employee;
- (ii) Within a health care worker and employee-patient relationship;
- (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
- (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.

7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.

7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.^{2[2]} Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of

^{1[1]} The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the National Bargaining Council for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

^{2[2]} See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

7.2. Confidentiality and Disclosure

- 7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.
- 7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.
- 7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:
- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
 - (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
 - (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

8. PROMOTING A SAFE WORKPLACE

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:
- (i) the risk, if any, of occupational transmission within the particular workplace;
 - (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
 - (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
 - (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
 - (v) the procedures to be followed in applying for compensation for occupational infection;
 - (vi) the reporting of all occupational accidents; and
 - (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
- (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.

9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

10. EMPLOYEE BENEFITS

10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits

10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.

10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.

10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

11. DISMISSAL

11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.

11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.

11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

12. GRIEVANCE PROCEDURES

12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.

12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.

12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

13. MANAGEMENT OF HIV IN THE WORKPLACE

13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:

- 13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and

13.1.2. Long and short term measures to deal with and reduce this impact, including:

- (i) An HIV/AIDS Policy for the workplace
- (ii) HIV/AIDS Programmes, which would incorporate:
 - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
 - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
 - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE

14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.

14.2. Broadly, impact assessments should include:

- (i) Risk profiles; and
- (ii) Assessment of the direct and indirect costs of HIV/AIDS;

14.3. Risk profiles may include an assessment of the following:

- (i) The vulnerability of individual employees or categories of employees to HIV infection;
- (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
- (iii) A profile of the communities from which the organisation draws its employees;
- (iv) A profile of the communities surrounding the organisation's place of operation; and
- (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.

14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:

- (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
- (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;

14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE

15.1. A Workplace HIV/AIDS Policy

15.1.1. Every workplace should develop an HIV/AIDS policy^{3[3]}, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;

^{3[3]} This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

- (ii) an outline of the HIV/AIDS programme;
 - (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);
 - (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
 - (v) grievance procedures in line with item 12 of this Code;
 - (vi) set out the means of communication within the organisation on HIV/AIDS issues;
 - (vii) details of employee assistance available to persons affected by HIV/AIDS;
 - (viii) details of implementation and coordination responsibilities; and
 - (ix) monitoring and evaluation mechanisms.
- 15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including the trade union, employee representatives, occupational health staff and the human resources department.
- 15.1.3. The policy should reflect the nature and needs of the particular workplace.
- 15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:
- (i) communicated to all concerned;
 - (ii) routinely reviewed in light of epidemiological and scientific information; and
 - (iii) monitored for its successful implementation and evaluated for its effectiveness.

15.2. Developing Workplace HIV/AIDS Programmes

- 15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.
- 15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:
- (i) hold regular HIV/AIDS awareness programmes;
 - (ii) encourage voluntary testing;
 - (iii) conduct education and training on HIV/AIDS;
 - (iv) promote condom distribution and use;
 - (v) encourage health seeking behaviour for STD's;
 - (vi) enforce the use of universal infection control measures;
 - (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
 - (viii) endeavour to establish a wellness programme for employees affected by HIV/AIDS;
 - (ix) provide access to counselling and other forms of social support for people affected by HIV/AIDS;
 - (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
 - (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4
 - (xii) regularly monitor, evaluate and review the programme.

15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

16. INFORMATION AND EDUCATION

- 16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.
- 16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.

GLOSSARY

<i>Affected employee</i>	an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive
<i>AIDS</i>	AIDS is the acronym for "acquired immune deficiency syndrome". AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
<i>Epidemiological</i>	The study of disease patterns, causes, distribution and mechanisms of control in society.
<i>HIV</i>	HIV is the acronym for "human immuno deficiency virus". HIV is a virus which attacks and may ultimately destroy the body's natural immune system.
<i>HIV testing</i>	taking a medical test to determine a person's HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of 'risk behaviour' (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee's or job applicant's HIV status.
<i>HIV positive</i>	having tested positive for HIV infection.
<i>Infected employee</i>	an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
<i>Informed consent</i>	a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
<i>Policy</i>	a document setting out an organisation's position on a particular issue.
<i>Pre and post test counselling</i>	a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
<i>Reasonable Accommodation</i>	means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
<i>STDs</i>	acronym for "sexually transmitted diseases". These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.
<i>Surveillance Testing</i>	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

ANNEXURE B**PRODUCTIVITY**

The following provisions shall be applicable to the plant level productivity incentive schemes:

- (1) Employers shall pay an amount of 0.5% of the weekly wage into a dedicated productivity incentive bank account. This must be done on a weekly basis or on the date that wages are normally paid, if it is paid at a time other than weekly.
- (2) The money in this productivity incentive bank account is ringfenced for the introduction of plant level productivity incentive schemes only.
- (3) This productivity incentive scheme bank account shall be opened and authorised on the basis of co-signatures, as follows: a person nominated by management plus a SACTWU shop steward (where there are no shop stewards at a workplace, a representative nominated by the workers shall be the second signatory).
- (4) With effect from 1 September 2008, each workplace shall have a period of 2 months within which they must reach agreement between management and the union about how the productivity incentive scheme at that workplace will function and how the incentives are to be paid.
- (5) If there is no productivity incentive scheme agreement reached by 1 November 2008, all the monies in the productivity bank account must be paid out to the workers as part of their wages, until an agreement on an appropriate productivity incentive scheme is reached.
- (6) The productivity incentive scheme agreements reached must ensure that all workers covered by the terms of this agreement, not just some, shall benefit from the incentive scheme.
- (7) All productivity scheme agreements reached must be registered with the National Bargaining Council for the Clothing Manufacturing Industry, within 1 month after agreement has been reached.
- (8) Productivity incentive scheme agreements shall not contain any provisions, which have the effect of downward variation of any term or condition of employment.
- (9) The productivity incentive scheme envisaged in this agreement shall be in addition to and not in place of any existing productivity incentive scheme, which may currently exist.
- (10) If the workplace closes or is liquidated, all the money left in the productivity incentive bank account must be paid out to the employees at that workplace and who are covered by the terms of this agreement.

B - 68

ANNEXURE D**CONTRACT EMPLOYEES**

- (1) Those contract employees with 12 months' or more employment with the same employer shall be converted into permanent employees.
- (2) All contract employees shall be entitled to receive a pro-rata share of all statutory payments due to permanent employees.
- (3) All contract employees who are in employ as at the end of November each year shall be entitled to full payment for all public holidays which fall during the annual shutdown period.
- (4) Employees who have completed a learnership shall not be placed on a further contract period after the completion of such a learnership, but shall be employed as a permanent fulltime employee.
- (5) Where there are more beneficial arrangements (other than those set out in sub-clauses (1) to (4) above) governing the employment of contract workers, such provisions shall remain effective."

PART C:

**CONSOLIDATED
AGREEMENT**

FOR THE

**KWAZULU-NATAL
REGION**

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY**NATIONAL MAIN COLLECTIVE AGREEMENT**

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

Cape Clothing Association

Coastal Clothing Manufacturers' Association

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

¹*South African Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' 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 National Bargaining Council for the
Clothing Manufacturing Industry.

¹ *This Employer association has not signed the 2013/2014 Party-to-Party Agreement, however, remains an Employer Party to the Bargaining Council and, hence, is reflected on this page.

1. SCOPE OF APPLICATION

The terms of this Agreement shall be observed in the Clothing Manufacturing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

- Part A Provisions for the Eastern Cape Region
- Part B Provisions for the Free State and Northern Cape Region
- Part C Provisions for the KwaZulu-Natal Region
- Part D Provisions for the Northern Region (Clothing)
- Part E Provisions for the Northern Region (Knitting)
- Part F Provisions for the Western Cape Region (Clothing)
- Part G Provisions for the Western Cape Region (Country Areas)
- Part H Provisions for the Western Cape Region (Knitting)
- Part I Provisions for the Non-Metro Areas

by the employers and employees in the Clothing Industry who are members of the employers' organisations and the trade union, respectively.

2. PERIOD OF OPERATION OF THIS AGREEMENT

- (1) This agreement is binding on the parties hereto from 1 September 2013 until 31 August 2017 unless the parties agree otherwise in writing.
- (2) The parties record that they intend to request the Minister of Labour to extend this agreement to non-parties in the Clothing Industry in terms of section 32 of the Labour Relations Act 66 of 1995. The period of operation of this agreement in respect of non-parties will be determined by the Minister.

CONTINUES ON PAGE 162—PART 2



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette

No. 10167

Regulasiekoerant

Vol. 586

Pretoria, 14 April 2014

No. 37509

PART 2 OF 5

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes



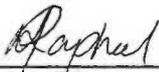
AIDS HELPLINE: 0800-0123-22 Prevention is the cure

Original Agreement signed at CAPE TOWN on behalf of the Parties the 24TH day of FEBRUARY

2014.



FREDA OOSTHUYSEN
Chairperson



MARTHIE RAPHAEL
Vice-Chairperson



SICELO NDUNA
General Secretary

PART C: PROVISIONS FOR THE KWAZULU-NATAL REGION**1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed-
- (a) by all employers who are members of the employers' organisation and who are engaged in the Clothing Industry, and by all employees who are members of the trade union and who are employed in the Industry;
 - (b) in the Magisterial Districts of Chatsworth, Durban, Inanda, Pinetown, Pietermaritzburg and Lower Tugela.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall-
- (a) apply in respect of employees for whom wages are prescribed in this part of the Agreement; and
 - (b) not apply in respect of employees whose basic wages exceed two and a half times the wage rate for a qualified Grade 1 employee or whose occupation is monthly paid and of a managerial, specialist, technical or non-production related nature.
- (3) The terms of this part of the Agreement shall also cover all garment knitting employees and who shall receive the same package labour cost increase as agreed to for all other employees covered by the scope of the Council.
- (4)
 - (a) The purpose of this part of the Agreement shall be to establish levels of remuneration and other conditions of employment for employees without seeking to restrict entrepreneurial initiative and employment opportunities.
 - (b) Employers employing five (5) or less employees shall, upon application to the council in terms of clause 23, be exempted from this part of the Agreement.
 - (c) Where an employer or an employee can satisfy the Council that any of the provisions of this part of the Agreement are restricting entrepreneurial initiative and/or employment opportunities, such employer or employee may apply to the Council for exemption from those specific provisions in terms of clause 23 of this part of the Agreement.
- (5) Clauses 1(1)(a), 2, 4(5) and 38(5) of this part of the Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.
- (6) The Table of Contents of this Part C of the Main Collective Agreement is as follows:

CLAUSE NO.	DESCRIPTION
1.	SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT
2.	PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT
3.	DEFINITIONS
4.	WAGES
5.	SHIFT ALLOWANCE
6.	TASK WORK
7.	SHORT -TIME

8.	PAYMENT OF WAGES AND OVERTIME
9.	HOURS OF WORK AND OVERTIME
10.	PUBLIC HOLIDAYS
11.	RECORDS
12.	WORK IN THE CLOTHING INDUSTRY
13.	PROPORTION OR RATIO OF EMPLOYEES
14.	ANNUAL LEAVE
15.	HOLIDAY LEAVE BENEFIT (ANNUAL BONUS) FUND ACCOUNT
16.	MATERNITY LEAVE
17.	PATERNITY LEAVE
18.	PREMIUMS FOR TRAINING
19.	REGISTRATION OF EMPLOYERS
20.	REGISTRATION OF EMPLOYEES
21.	TERMINATION OF SERVICE
22.	DISCIPLINARY AND GRIEVANCE PROCEDURE
23.	EXEMPTIONS
24.	PERSONS UNDER THE AGE OF 15 YEARS
25.	COUNCIL FUNDS
26.	SACTWU FUNDS
27.	CLOSED SHOP AND TRADE UNION MEMBERSHIP/SUBSCRIPTIONS
28.	ACCESS TO AND ORGANISING FACILITIES ON AN EMPLOYERS' PREMISES BY THE TRADE UNION
29.	RIGHTS OF TRADE UNION REPRESENTATIVES
30.	AGENTS
31.	EXHIBITION OF AGREEMENT, WAGE RATES AND HOURS OF WORK
32.	ADMINISTRATION OF AGREEMENT
33.	TRADE UNION'S REPRESENTATIVES OF THE COUNCIL
34.	WORKING PROPRIETORS AND / OR WORKING PARTNERS
35.	SICK BENEFIT FUND
36.	RETRENCHMENT
37.	FINANCIAL MATTERS
38.	DISPUTE PROCEDURES
39.	ATYPICAL WORK AND SUBCONTRACTING
40.	FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION
41.	PRODUCTIVITY
42.	AGENCY SHOP
43.	INDUSTRY PROTECTION FUND (Annexure C)
44.	HIV/AIDS (Annexure A)
45.	CONTRACT EMPLOYEES (Annexure D)
46.	WORKING IN ARRANGEMENTS

2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

3. DEFINITIONS

Any expressions used in this part of the Agreement which are defined in the Act shall have the same meaning as in the Act. Any reference to an Act includes any amendments of such Act, and, unless the contrary intention appears, any reference to one gender shall include the other, further, unless inconsistent with the context-

A. General Definitions

"Accounting Officer" means -

- (a) any Manager or Secretary of an establishment who is a member of a recognised profession as set out in section 60 of the Close Corporations Act, 1984; and
- (b) any other person approved by the Council.

"Act" means the Labour Relations Act, 1995;

"Clothing Industry" or "Industry" means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear; nightwear (including pyjamas), outerwear, protective wear (including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties), and underwear;

A. and includes-

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;

- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of buttonholes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is(are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

B. but excludes-

- (a) belts, braces, garters, suspenders and armlets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

"complying employer" means an employer which is registered with the Council and which has registered all permanent and contract employees with the Council, and which has given effect to all collective agreements of the Council which are applicable to it in each of its establishments, or which has received exemption from any collective agreement to the extent of such exemption;

"contract worker" means an employee who is employed on a fixed-term contract;

"Council" means the Kwazulu-Natal Chamber (formerly the Bargaining Council for the Clothing Industry (Natal) of the National Bargaining Council for the Clothing Manufacturing Industry;

"earnings" means the total remuneration due to an employee for the time actually worked;

"employee" means -

- (a) any person within the scope of application of this part of the Agreement as set out in clause 1, excluding an independent contractor, who works for another person in the Clothing Industry and who receives, or is entitled to receive, any remuneration; and
- (b) any other person within the scope of application of this part of the Agreement as set out in clause 1, who in any manner assist in carrying on or conducting the business of an employer in the Clothing Industry.

"establishment" means any place in which any operation in connection with the Clothing Industry is carried on;

"experience" means the total period of employment an employee has had in the Clothing Industry, whether within the Republic of South Africa or elsewhere, in any capacity other than as a driver of a motor vehicle, or mechanic, and includes-

- (a) in the case of a clerical employee, all periods of employment which such employee has had as a clerical employee, irrespective of the trade, industry or undertaking in which such experience was gained;
- (b) in the case of a retail or private dressmaker seeking employment in the Clothing Industry in a capacity other than that of a clerical employee, traveller, mechanic, belt man, boiler attendant or driver of a motor vehicle, half of his total experience as a retail or private dressmaker;
- (c) in the case of a presser and/or folder who has been in the Laundry Trade, seeking employment as a presser, ironer and/or folder in the Clothing Industry, half of his total experience in the Laundry Trade;
- (d) in the case of all other employees, each completed period of six months' training in any work similar to that for which wages are prescribed in this part of the Agreement shall entitle the employee to one increment on the appropriate wage scale;

"hourly wage or rate" means the weekly wage divided by 42½.

"Laundry Trade" means the trade in which employers and employees are associated for the purpose of laundering, cleaning or dyeing all types of woven, spun, knitted or crocheted fabrics or articles made from such fabrics, including all operations incidental thereto or consequent thereon, if carried out by such employers and their employees;

"learner" means an employee whose period or periods of employment do not entitle him to be paid the qualified wage prescribed in clause 4(1) for an employee of that class;

"monthly wage" means the weekly wage multiplied by four and one-third;

"level B compliance" refers to the status of non-compliant employers who bring themselves within the provisions of clause 38(8). For so long as such employers abide by all the conditions set out therein, no writs of execution in respect of non-compliance will be enforced against them, and they will be entitled to Level B Compliance Certificates from the Council;

"National Council" means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of the Act;

"night shift" means any period of work performed in an establishment, the major portion of which falls between the hours 18:00 and 06:00;

"paternity" means any event connected to the birth or adoption of a child parented by a male employee;

"piece-work" means any system by which earnings are calculated upon the quantity or output of work performed;

"premium" means, without in any way limiting the ordinary meaning of the term, any consideration of whatever nature given in return for the training of an employee;

"qualified employee" means in relation to an employee in the Industry, an employee other than a learner, labourer, watchman and driver of a motor vehicle;

"qualified wage" means the maximum wage prescribed in clause 4 (1) for an occupation;

"rates" means piece-work rates or rates of payment for overtime;

"retail dressmaking" means the making of single garments for girls and women to the measurement of individual persons, not as special measure orders from dealers whose customers' measurements are taken by or the responsibility of such dealers;

"retail millinery" means the making of hats in shops for sale in such shops and the making of hats to the measurements of individual persons;

"task-work" means the setting by an employer or his representative to an employee of a definite number of garments or portions of garments to be made up by such employee in a specified time;

"unladen mass" means the mass of any motor vehicle and/or trailer as expressed in a licence or certificate issued by a licensing authority in respect of such motor vehicle or trailer: Provided that in the case of a two or three-wheeled motor vehicle (other than a mechanical horse), the unladen mass shall be deemed to be under 454 kg;

"weekly wage" or "wage" means that portion of the remuneration payable in money to an employee in respect of the ordinary hours of work set out in clause 9 (1);

"workshop" means any premises in which one or more employees are engaged on operations in the Clothing Industry.

B. Definitions of the occupations, capacities and duties of employees in the Clothing Sector only:

"assistant head cutter" means a person who assist the head cutter in creating designs, styles, fashions and in making patterns, grading patterns and planning cutting jobs;

"assistant storeman" means an employee other than a labourer who, under the supervision of a storeman, assists in issuing or receiving goods;

"automatic hydraulic hat presser" means an employee operating an automatic hydraulic hat press used solely for shaping hats;

"bandknife cutter" means an employee who cuts out all articles of wearing apparel, linings, trimmings or interlinings with a bandknife;

"baster" means an employee engaged in hand sewing in setting a coat or parts of a coat into position preparatory to other operations and/or underbasting, i.e. hand sewing of linings of coats into position preparatory to sewing the edge seams;

"belt man" means an employee other than a learner mechanic, engaged in fixing machine belts, oiling bearings, filling oil cans and similar work and assisting the establishment's mechanic;

"boiler attendant (Clothing)" means an employee who, under the supervision of a foreman or factory manager, is responsible for maintaining the water level and steam pressure of a boiler in an establishment, and who may stoke, rake, slice and draw the fire in such boiler;

"cardboard box maker" means an employee engaged in operating a cardboard box making machine;

"cleaner" means an employee engaged in cutting or trimming off loose ends of cotton left in the garments by previous operators;

"clerical employee" means an employee who is engaged in-

- (a) writing, typing and filling;
- (b) operating a calculating machine, computer terminal, punch card machine or accounting machine;
- (c) any other clerical work and includes a cashier, despatch clerk (clothing), storeman, shipping clerk, invoice clerk, work study clerk and telephone switchboard operator but does not include any other class of employee elsewhere defined, notwithstanding the fact that clerical work may form part of such employee's work.

"clicker" means an employee who cuts out parts of garments from dies using a mechanical or hydraulic press;

"coat-turner" means an employee engaged in turning coat facings out after machining;

"conveyor" or "conveyor belt" means a special machine used for the purpose of conveying articles or shirts and/or clothing from one employee to another on an automatic moving belt;

C - 10

"conveyor feeder" means an employee responsible for feeding prepared parts of garments on to a conveyor for further operations and who may be assisted by one or more sorters;

"cutter" means an employee who cuts out all articles of wearing apparel, linings, trimmings or interlinings by any method;

"despatch packer (Clothing)" means an employee who, under the supervision of a foreman or clerical employee, is wholly or mainly engaged in making up orders and in packing goods for transport, including the sealing of cellophane bags by hand or machine, or delivering in connection with the despatch department of an establishment;

"dressmaker" means a person engaged in making dresses to individual measurements for private persons;

"driver 1" means the driver of a motor vehicle with unladen mass of less than 454 kilograms;

"driver 2" means the driver of a motor vehicle with unladen mass of between 454 and 2 722 kilograms;

"driver 3" means the driver of a motor vehicle with unladen mass of between 2 723 and 4 540 kilograms;

"driver 4" means the driver of a motor vehicle with unladen mass of more than 4 540 kilograms;

"examiner" means an employee who examines finished garments for quality;

"factory clerk (Clothing)" means an employee who is engaged in one or more of the following duties and capacities:

- (a) Calculating bonus payments from production schedules for the computation of wages;
- (b) checking or recording for production control;
- (c) copying invoices or other documents by machine or hand;
- (d) issuing machine parts, tools, oil and other equipment from a workshop store and/or recording same;
- (e) checking attendance records or recording particulars of employees at work or absent from work, preparing wage cards or envelopes for subsequent use by another employee;
- (f) checking invoices or other documents;
- (g) filing of documents;
- (h) recording particulars of waste.

"finisher by hand" means an employee who performs one or more of the following operations by hand: Putting pads or wadding into shoulders of coats; fastening or serging sleeve-heads; felling silk facings already basted into position; making button-holes by hand, felling sleeve-head linings, holding such in position with the fingers; beader or embroiderer by hand.

"fitter-up" means an employee who takes the outside garments together with the cut out linings (called trimmings) and adjusts the outside and insides together accurately so that parts may go forward to the machine to be put together correctly;

"folder" means an employee engaged in the folding of garments by machine or by hand and buttoning up of garments;

"foreperson (Clothing)" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to his/her care in a factory or a department;

"General Worker Heavy Work" means an employee who is engaged in one or more of the following occupations:

- (a) Binding, wiring or strapping boxes or bales or other containers;
- (b) loading or unloading vehicles, trailers or international standard containers;

- (c) carrying or stacking goods;
- (d) mixing rubber solution for rubberised garments;
- (e) general gardening work;
- (f) washing or polishing of floors and staircases by machine or by hand.

"General Worker Light Work" means an employee who is engaged in one or more of the following occupations:

- (a) sweeping with a broom and/or dusting and wiping down chairs and tables;
- (b) folding and/or inserting mail, affixing postage stamps or labels for posting;
- (c) making and serving tea or similar beverages and washing crockery, cutlery and kitchen utensils;
- (d) marking, stencilling or affixing labels on boxes, bales or other containers by hand;
- (e) delivering letters or messages or light parcels within the factory premises;
- (f) operating a duplicating and/or addressograph and/or franking machine;
- (g) mopping and/or washing of toilet facilities.

"Grade I employee" means an employee engaged in one or more of the following duties or capacities:

- (1) Baster;
- (2) clicker;
- (3) conveyor feeder;
- (4) examiner;
- (5) finisher by hand;
- (6) fitter-up;
- (7) folder;
- (8) lay copier;
- (9) machinist;
- (10) maker of bows for dresses;
- (11) operator of automatic lace, embroidery or monogramming machine;
- (12) presser;
- (13) seam welder;
- (14) setter of automatic pleating machines;
- (15) shaper;
- (16) sloper;
- (17) any other employee not elsewhere specified;
- (18) factory clerk.

"Grade A Employee" means an employee engaged in any one of the following duties or capacities:

- (1) General worker heavy work;
- (2) layer by machine;
- (3) underpresser.

"Grade II employee" means an employee engaged in any one or more of the following duties or capacities:

C - 12

- (1) Assistant storeman;
- (2) automatic hydraulic hat presser;
- (3) belt man;
- (4) boiler attendant;
- (5) cardboard box maker;
- (6) cleaner;
- (7) coat turner;
- (8) covering buckles by hand or machine and/or trimming and cleaning belts after lining and belt having been machined together;
- (9) cutter of traveller's swatches;
- (10) despatch packer;
- (11) eyelet punching and letting;
- (12) guiding material with paper through automatic pleating machine;
- (13) hat sprayers, i.e. those spray painting hats;
- (14) ironer of fusible interlinings with hand iron positioning and spot fusing of fusible interlinings with special machine;
- (15) marker;
- (16) operator of hand/or machine-operated button-covering machine;
- (17) operator of a shrinking press;
- (18) operator of a semi-automatic or automatic fusing machine;
- (19) operator of a semi-automatic press stud-machine;
- (20) operator of zip machine;
- (21) packer;
- (22) patent turner (hand or machine);
- (23) pinner;
- (24) plain sewer;
- (25) putting fasteners on caps;
- (26) putting material between two paper looms (formers) and preparing for steambox in hand or loom pleating process;
- (27) putting prepared formers in steambox and taking them out again in hand or loom pleating;
- (28) rivetting buckles, bending belt buckles, punching holes for buckles and prongs, pressing prongs into buckles, stapling buckles onto belt;
- (29) rubberising, i.e. waterproofing processes on the work of smearing rubber solution upon seams or edges and rolling them over with a small wooden hand roller, cleaning off any rubber solution, painting seams or oilskins and waterproof hats;
- (30) sorter;
- (31) spreading of PVC (plastic solution) in waterproofing process and/or on raincoats and protective wear;
- (32) Stamper;
- (33) raking material out of looms in hand or loom pleating process;
- (34) waterproofing seams;

(35) winder or unwinder of lace, embroidery, braids, ribbons, bindings and elastic;

(36) layer by hand;

(37) general worker light work.

"hat sprayer" means an employee engaged in spray painting hats,

"head cutter" means the person who actively supervises the cutting room and who designs, styles and fashions, makes patterns, grades patterns and who plans cutting jobs;

"lay copier" means an employee engaged in placing of numbered patterns on a lay to conform with a numbered photograph, diagram or plan;

"layer by hand" means an employee engaged in laying up materials by hand preparatory to cutting;

"layer by machine" means an employee engaged in laying materials by machine preparatory to cutting;

"machinist" means an employee who performs by sewing machine any operation in the making of clothing;

"marker" means an employee engaged in marking the position of pockets, buttons and/or button holes;

"mechanic (Clothing)" means an employee engaged in the installation, repair and maintenance of boilers and machinery;

"motor vehicle driver" or "driver of a motor vehicle" means an employee engaged in driving a motor vehicle and for the purposes of this definition "driving a motor vehicle" is deemed to include 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 on duty in readiness to drive;

"packer" means an employee engaged in packing garments into boxes or other suitable wrappings or tying them into bundles prior to their being sent to the despatch department;

"patent turner" means an employee engaged in turning out or over the edges of collars, facings, bands, cuffs, pockets and/or flaps whether by hand or machine;

"pinner" means an employee engaged in pinning unfinished and/or finished garments;

"plain sewer (Clothing)" means an employee engaged solely in performing by hand one or more of the following operations:

Tacking permanent turn-ups; tacking waistband linings; sewing on hooks and eyes, tickets and/or press studs; fastening catch in tops of trousers; sewing on buttons; making and sewing on hangers; felling crutch linings in trousers, felling bottoms and waist-band linings and various odds and ends of sewing; felling necks of vests; fastening edge stays and odds and ends of sewing; felling bottoms of linings or seams of same already basted into position; felling bindings; fastening facings inside already basted in position;

"presser" means an employee employed in pressing the finished garment by hand or machine;

"seam welder" means an employee who joins seams by any method other than by a thread-sewing machine;

"setter of automatic pleating machines" means an employee engaged on setting of pleats on automatic pleating machines;

"shaper" means an employee engaged in shaping the lapels and collars of coats preparatory to underbasting;

"shop steward" means an employee at any establishment who has been duly elected as a shop steward in terms of the constitution of the trade union and who has been recognised by the employer as a shop steward;

C - 14

"short-time" means working time that is reduced below the usual number of working hours in the establishment when such reduction is due to slackness of work or the exigencies of the Industry;

"sloper" means an employee engaged in marking or trimming the shape of the necks in the shirt section, preparatory to other operations;

"sorter" means an employee engaged in sorting out garments or parts of garments for the various operations;

"stamper" means an employee engaged in stamping the size or identity work numbers on garments or parts of garments, or on any article connected with packaging or despatching of garments;

"storeman (Clothing)" means an employee in charge of the main stock room of an establishment;

"trimmer" means an employee engaged in marking in and/or cutting linings and interlinings;

"under-presser" means an employee other than a presser employed in pressing processes;

"watchman (Clothing)" means an employee engaged in guarding premises, buildings or other property;

"waterproofing seams" means waterproofing of a threadsewn seam by means of a hot press;

C. Definitions of the occupations capacities and duties of employees in the Garment Kitting Sector only:

"boiler attendant (Knitting)" means an employee who, under general supervision, maintains the water level and steam pressure of a boiler and who may make, maintain or draw the fire in such boiler, and who removes ashes;

"colouring mass-measurer" means an employee who, under the supervision of a dyer, is responsible for the mass-measuring of dyestuffs and chemical byproducts;

"cutter or shaper (Knitting)" means an employee who is engaged in cutting fronts, backs and/or sleeves of a fully-fashioned garment and/or trimmings, and marking and/or cutting attachments, points of necks and/or armholes and/or trimmings and who may use a template for this purpose;

"despatch clerk (Knitting)" means an employee who is responsible for the despatch or the packing of goods for transport or delivery and who may supervise the assembling, checking, mass-measuring, packing, marking, addressing or despatching of such goods or packages;

"despatch packer (Knitting)" means an employee who, under the supervision of a despatch clerk, is engaged in packing, assembling, marking, addressing and mass-measuring goods for despatch or delivery;

"driver of a motor vehicle (Knitting)" means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, the expression 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;

"dyer" means an employee who is responsible for and engaged in dyeing and/or other finishing processes and who decides on the nature, mass blending and application of the dyes or other chemicals to be used;

"dyer's assistant" means an employee who, under the supervision of a dyer, is responsible for the mixing of colours and/or formulae and who may attend or operate the machines used in the dyeing and finishing processes;

"factory clerk (Knitting)" means an employee who is engaged in any one or more of the following duties:

- (a) Checking attendance records or recording particulars of employees at work or absent from work, collating time cards and/or envelopes;
- (b) checking or recording production control; and
- (c) recording particulars of waste;

"floorwalker/runner" means an employee who is engaged in carrying garments or parts of garments from one place to another within the workplace;

"foreperson (Knitting)" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to his care in the workplace or a department of the workplace;

"general worker (Knitting)" means an employee who is engaged in one or more of the following activities:

- (a) Carrying, moving, stacking or unpacking goods or other articles;
- (b) cleaning or washing premises;
- (c) cutting up or otherwise destroying rejected hosiery or fabrics;
- (d) gardening work;
- (e) lime-washing or colour-washing buildings, or other structures;
- (f) loading or unloading;
- (g) making or maintaining fires, or removing refuse or ashes; and
- (h) opening or closing or unpacking or strapping cartons, boxes, bags and other containers;

"handyman" means an employee, other than a knitting machine operator, mechanic or mechanic's assistant, who is engaged in making minor repairs and adjustments to machinery, plant, building and other equipment;

"knitting machine operator" means an employee who is engaged in changing needles, sliders and sinkers, straightening tricks, including chain and card control, and running on after press-offs, but excludes the resetting of the machine and pattern changing;

"linker" means an employee who is engaged in operating a linking machine used for the purpose of toe-closing in hosiery and/or joining parts of a fully-fashioned garment and/or attaching trimmings to a fully-fashioned garment or parts of a garment;

"mechanic (Knitting)" means an employee who is engaged in the operation, maintenance, rebuilding and refitting of knitting machines and other machines used in the Knitting Industry and who is also proficient in pattern designing and making;

"mechanic's assistant" means an employee who, in addition to performing the duties of a knitting machine operator, is engaged in the resetting of machines, including pattern drum, pattern wheel and jacquard set-outs, and, under the supervision of a mechanic, carrying out minor repairs and generally stripping and assembling machines;

"mender" means an employee who is engaged in repairing knitting faults in fabric, garments, blanks and/or hosiery; "night work" means work performed after 18:00 and before 06:00 the next day;

"parcel maker" means an employee who is engaged in closing and/or sealing parcels and cartons prior to despatch and delivery;

"plain sewer (Knitting)" means an employee who performs one or more of the following operations by hand:

C - 16

Fastening edge-stays and odds and ends of sewing; sewing on buttons; hand knitting and/or hand crocheting; and all hand sewing not elsewhere specified;

"pre- or post-boarder or former" means an employee who is engaged in placing hosiery and/or garments on forms and subsequently removing them;

"seamer" means an employee who is engaged in joining seams in hosiery by means of a seaming machine;

"security officer" means an employee who is in charge of staff engaged in guarding the safety of premises and/or the property of the workplace, and who may be in charge of searching staff and who carries out such security work as may be assigned to him by the management;

"sewing machinist (Knitting)" means an employee who is engaged in operating a sewing machine using a needle and thread in a Garment Knitting establishment;

"sorter and/or grader" means an employee who is engaged in sorting and/or grading hosiery into pairs according to length and size and/or sorting trimmings, materials and/or parts of fully-fashioned garments;

"store clerk" means an employee who is employed in the store or warehouse of the workplace under the general supervision of a storeman and who is engaged in the general handling of goods in the workplace, but does not include a general worker;

"storeman (Knitting)" means an employee who is in general charge of stocks of incoming goods or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or warehouse or delivering goods from a store or warehouse to the consuming departments in the workplace or for despatch;

"supervisor (Knitting)" means an employee who, under the supervision of a foreman and/or manager, is in charge of a group of employees in a Garment Knitting establishment;

"traveller's assistant" means an employee who, under the supervision of a traveller, is engaged in such tasks as may facilitate the execution of the work of the traveller, but does not include the driving of a motor vehicle;

"warp knitting machine operator" means an employee who operates one or a set of warp knitting machines, and who is capable of correcting faults, changing and/or straightening needles, filling bars, and making minor adjustments, and includes a threader and needle fixer;

"warper" means an employee who prepares warps from cones or bobbins for a warp knitting or similar machine and who prepares the beam;

"watchman(Knitting)" means an employee who is engaged in guarding premises or other property;

"winder" means an employee who is engaged in operating a yarn-winding machine;"

In classifying an employee for the purpose of this part of the Agreement he shall be deemed to be in that class in which he is wholly or mainly engaged.

4. WAGES

- (1) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees employed at clothing establishments shall be as follows:

(a)

Description of Occupation		Group A Wage per week from 01 Sep 2013 to 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	Group B Wage per week from 01 Sep 2013 to 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
Part A - Cutting Department					
GRADE 1					
(a)	Qualified	893.80	715.05	897.95	718.35
(b)	Learner				
	0 - 6 months	589.95	471.95	592.75	474.20
	7 - 12 months	652.65	522.10	655.65	524.50
	13 - 18 months **	715.15	572.10	718.50	574.80
	Thereafter, the qualifying wage applies	893.80	715.05	897.95	718.35
GRADE 2					
(a)	Qualified	776.85	621.50	780.45	624.35
(b)	Learner				
	0 - 6 months	586.80	469.45	589.60	471.70
	Thereafter, the qualifying wage applies	776.85	621.50	780.45	624.35
GRADE A					
(a)	Qualified	795.95	636.75	799.60	639.70
(b)	Learner				
	0 - 6 months	618.25	494.60	621.20	496.95
	Thereafter, the qualifying wage applies	795.95	636.75	799.60	639.70
HEAD CUTTER		1 426.05	1140.85	1432.60	1146.10
ASSISTANT HEAD CUTTER		1 140.75	912.60	1146.00	916.80
CUTTER/TRIMMER					
(a)	Qualified	896.00	716.80	900.15	720.10
(b)	Learner				
	0 - 6 months	562.00	449.60	564.70	451.75
	7 - 12 months	627.95	502.35	630.75	504.60
	13 - 18 months	691.20	552.95	694.40	555.50
	19 - 22 months	766.40	613.10	769.85	615.90
	Thereafter, the qualifying wage applies	896.00	716.80	900.15	720.10
BAND KNIFE CUTTER					
(a)	Qualified	942.95	754.35	947.30	757.85
(b)	Learner				

C - 18

Description of Occupation		Group A Wage per week from 01 Sep 2013 to 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	Group B Wage per week from 01 Sep 2013 to 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	0 - 6 months	628.80	503.05	631.65	505.30
	7 - 12 months	698.30	558.65	701.50	561.20
	13 - 18 months	761.95	609.55	765.55	612.45
	19 - 22 months	834.45	667.55	838.30	670.65
	Thereafter, the qualifying wage applies	942.95	754.35	947.30	757.85
MECHANIC					
(a)	Qualified	1 532.50	1226.00	1539.60	1231.70
(b)	Learner				
	0 - 6 months	707.10	565.70	710.30	568.25
	7 - 12 months	811.95	649.55	815.75	652.60
	13 - 18 months	931.85	745.50	936.30	749.05
	19 - 24 months	1 051.80	841.45	1056.70	845.35
	25 - 30 months	1 179.65	943.70	1185.20	948.15
	31 - 36 months	1 297.20	1037.75	1303.20	1042.55
	37 - 40 months	1 412.85	1130.30	1419.40	1135.50
	Thereafter, the qualifying wage applies	1 532.50	1226.00	1539.60	1231.70
CLERK *					
(a)	Qualified	957.85	766.30	962.30	769.85
(b)	Learner				
	0 - 6 months	651.25	521.00	654.25	523.40
	7 - 12 months	735.35	588.30	738.75	591.00
	13 - 18 months	804.45	643.55	808.15	646.50
	Thereafter, the qualifying wage applies	957.85	766.30	962.30	769.85
WATCHMAN		802.80	642.25	806.50	645.20
DRIVER 1		754.05	603.25	757.60	606.10
DRIVER 2		824.00	659.20	827.80	662.25
DRIVER 3		960.75	768.60	965.25	772.20
DRIVER 4		1 160.45	928.35	1165.85	932.70
FOREPERSON		1 098.60	878.90	1103.70	882.95
* Provided a registered productivity incentive scheme is in place.					
** Provided that a sewing machinist (grade 1) should be paid the qualified rate of pay after 18 months of experience.					

C - 19

Description of Occupation	Group A Wage per week from 01 Sep 2013 to 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	Group B Wage per week from 01 Sep 2013 to 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
	R	R	R	R
NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by 7% Across-the-Board.				

- (b) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the under-mentioned classes of employees employed at Garment Knitting establishments, shall be as follows:

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
(i)	Foreman:	1677.80	1342.25	1685.60	1348.50
(ii)	Dyer: (See (iv) below)				
(iii)	Storeman:				
	(i) Qualified:	1615.00	1292.00	1622.50	1298.00
	(ii) Learners:				
	first six months of experience	583.50	466.80	586.20	468.95
	second six months of experience	841.35	673.10	845.20	676.15
	third six months of experience	1099.35	879.50	1104.45	883.55
	next four months of experience	1357.20	1085.75	1363.40	1090.70
	Thereafter, the wage specified in (iii)(i) i.e.	1615.00	1292.00	1622.50	1298.00
(iv)	Mechanic/Dyer:				
	(i) Qualified:	1677.80	1342.25	1685.60	1348.50
	(ii) Learners:				
	first six months of experience	583.50	466.80	586.20	468.95
	second six months of experience	692.70	554.15	696.05	556.85
	third six months of experience	802.25	641.80	806.00	644.80
	fourth six months of experience	911.80	729.45	915.95	732.75
	fifth six months of experience	1021.30	817.05	1026.10	820.90
	sixth six months of experience	1130.40	904.30	1135.65	908.50
	seventh six months of experience	1240.15	992.10	1245.90	996.70
	eighth six months of experience	1349.55	1079.65	1355.80	1084.65
	ninth six months of experience	1458.85	1167.10	1465.65	1172.50
	next four months of experience	1568.55	1254.85	1575.85	1260.70

C - 20

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
	Thereafter, the wage specified in (iv)(i) i.e.	1677.80	1342.25	1685.60	1348.50
(v)	Mechanic's Assistant:				
	(i) Qualified:	1099.05	879.25	1104.20	883.35
	(ii) Learners:				
	first six months of experience	583.50	466.80	586.20	468.95
	second six months of experience	634.50	507.60	637.45	509.95
	third six months of experience	686.85	549.50	689.95	551.95
	fourth six months of experience	737.75	590.20	741.20	592.95
	fifth six months of experience	789.65	631.70	793.35	634.70
	sixth six months of experience	841.45	673.15	845.35	676.30
	seventh six months of experience	892.70	714.15	896.85	717.50
	eighth six months of experience	944.55	755.65	948.80	759.05
	ninth six months of experience	995.85	796.70	1000.45	800.35
	next four months of experience	1047.55	838.05	1052.30	841.85
	Thereafter, the wage specified in (v)(i) i.e.	1099.05	879.25	1104.20	883.35
(vi)	Supervisor:	1161.85	929.50	1167.25	933.80
(vii)	Final Examiner of fully-fashioned garments:	1079.00	863.20	1083.95	867.15
(viii)	Factory Clerk, Despatch Clerk, Stores Clerk:				
	(i) Qualified:	1056.45	845.15	1061.35	849.10
	(ii) Learners:				
	first six months of experience	583.50	466.80	586.20	468.95
	second six months of experience	701.60	561.30	704.90	563.90
	third six months of experience	819.90	655.90	823.70	658.95
	next four months of experience	938.35	750.70	942.65	754.10
	Thereafter, the wage specified in (viii)(i) i.e.	1056.45	845.15	1061.35	849.10
(ix)	Knitting Machine Operator, Warp Knitting Machine Operator, Dyer's Assistant, Colouring Mass-Measurer and/or Cutter or Shaper (Knitting) of fully-fashioned garments, Handyman and Warper:				
	(i) Qualified:	1056.45	845.15	1061.35	849.10
	(ii) Learners:				
	first six months of experience	583.50	466.80	586.20	468.95
	second six months of experience	662.10	529.70	665.20	532.15
	third six months of experience	740.80	592.65	744.25	595.40

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
	fourth six months of experience	819.90	655.90	823.80	659.05
	fifth six months of experience	898.70	718.95	902.80	722.25
	next four months of experience	977.70	782.15	982.25	785.80
	Thereafter, the wage specified in (ix)(i) i.e.	1056.45	845.15	1061.35	849.10
(x)	Loader of magazine or comb, Linker, Overlocker other than an overlocker of seconds in socks, Sewing Machinist (Knitting) including a button, buttonhole and hemming machinist, Mender and Plain Sewer:				
	(i) Qualified:	921.80	737.45	926.20	740.95
	(ii) Learners:				
	first six months of experience	583.50	466.80	586.20	468.95
	second six months of experience	667.80	534.25	670.90	536.70
	third six months of experience	752.35	601.90	755.85	604.70
	next four months of experience	708.00	566.40	841.15	672.90
	Thereafter, the wage specified in (x)(i) i.e.	921.80	737.45	926.20	740.95
(xi)	Driver of a Motor Vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle—:				
	(a) does not exceed 453,5 kg	881.25	705.00	885.30	708.25
	(b) exceeds 453,5 kg but not 2 721 kg	1040.50	832.40	1045.30	836.25
	(c) exceeds 2 721 kg but not 4 535 kg	1108.00	886.40	1113.10	890.50
	(d) exceeds 4 535 kg	1202.35	961.90	1207.90	966.30
(xii)	Security Officer:	1345.90	1076.70	1352.20	1081.75
(xiii)	Watchman:	1038.70	830.95	1043.50	834.80
(xiv)	Employee not elsewhere specified:				
	(i) Qualified:	1081.40	865.10	1086.35	869.10
	(ii) Learners:				
	first six months of experience	583.50	466.80	586.20	468.95
	second six months of experience	707.70	566.15	711.05	568.85
	third six months of experience	832.55	666.05	836.40	669.10
	next four months of experience	956.85	765.50	961.30	769.05
	thereafter, the wage specified in (xiv)(i) i.e.	1081.40	865.10	1086.35	869.10

C - 22

DESCRIPTION OF OCCUPATION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
(xv)	Seamer, Mender of socks, Sorter, Cleaner (i.e. an employee engaged in cleaning garments and/or fabrics), Grader, Sampler (i.e. an employee engaged in the making up of sample cards), Winder, Overlocker for seconds in socks and/or Examiner of knitted fabrics and articles, Backwinder, Drawthreader, Pre- and Post-Boarder or Former, Precutter, Presser, Turner, Operator of calendar, slitting, setting or steaming machine, Operator of brushing, raising and/or cropping machine, Operator of dye machine, Operator of drying and/or hydro-extracting machine, employee engaged in Transferring and/or Labelling, Trimming of surplus threads, Folding, Carding and/or Packing, Waxring Maker, Boiler Attendant, Creeler, Despatch Packer, Parcel Maker and Floor Walker/Runner.				
	(i) Qualified:	757.85	606.30	761.40	609.10
	(ii) Learners:				
	first six months of experience	583.50	466.80	586.20	468.95
	second six months of experience	641.40	513.10	644.40	515.50
	third six months of experience	700.05	560.05	703.20	562.55
	Thereafter, the wage specified in (xv) (i) i.e.	757.85	606.30	761.40	609.10
(xvi)	Traveller's Assistant, Cloakroom Supervisor and/or Attendant, Teamaker	757.85	606.30	761.40	609.10
(xvii)	General Worker (Knitting)	880.30	704.25	884.40	707.50

NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by 7% Across-the-Board.

Whenever a qualified Grade 2 employee is transferred to another occupation classified as the work of a Grade 1 employee, he shall receive not less than his existing rate of pay for a period of six months and thereafter, on completion of that period, he shall receive his next increment and thereafter the prescribed increments in his new occupation. An unqualified Grade 2 employee who is transferred to another occupation classified as the work of a Grade 1 employee, shall be paid not less than the wage he was receiving prior to his transfer, but shall be paid the prescribed increments in his new occupation.

(2) New Employees

2.1 New employees shall be paid a weekly wage of 70% of the rate in metro areas, subject to the following provisions:

2.1.1 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a period of 3 years.

2.1.2 The provision is only applicable to compliant companies.

2.1.3(a) The new entry-level wage provision will continue in force and effect as an industry-wide provision after the 31st August 2014 if there has been an increase in employee strength of compliant employers in the industry of at least 15% as at 31st March 2014, monitored on a bi-annual basis.

(b) The bi-annual benchmark monitoring shall be measured against the following schedule of new employment growth:

1 March 2012:	3% increase
1 September 2012:	6% increase
1 March 2013:	9% increase
1 September 2013:	12% increase
1 March 2014:	15% increase

2.1.4 It is only applicable to those compliant companies who were in existence and operational as at 1 June 2011.

2.1.5 All other provisions of the main agreement shall be applicable to new employees.

2.1.6 The closed shop shall be applicable to all new employees.

2.1.7(a) The employee strength to determine whether or not there has been an increase in employee strength will be measured by comparing the employee strength of compliant employers whose businesses are registered with the bargaining council on the 1st June 2011, as per clause 2.1.3, and to that of the employee strength of compliant employers whose businesses are registered with the bargaining council on the 31st March 2014, i.e. a period of 30 months following the implementation of this Agreement.

(b) In the event that the employee strength does not increase as per the provisions of this Agreement and more specifically, the provisions of Clause 2.1.3 above, the provisions of the new-entry wage provision will terminate.

C - 24

- (c) Upon such termination of the application of the new entry level wage provision, the wages of all employees earning the new-entry wage will be increased to the full applicable gazetted wage for all job categories from the first pay week following the 31st August 2014, unless the parties during the 2014/2015 round of annual or other negotiations agree otherwise or agree to an alternative to address any further job losses or the absence of job growth in the industry.
- 2.1.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to employ employees at the rates specified in sub-clause 2.1.3 (a) above.
- 2.1.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 2.1.10 Qualified employees shall be employed at the qualified new entry rate, subject to sub-clause 2.1.1.
- 2.1.11 Effective 1st September 2011, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.

(3) INCENTIVISED WAGE RATES

The 'new entry wage rates' provisions as specified in clause 4 of the 2011/2012 party-to-party substantive agreement shall be abolished and replaced with the following incentivised wage rates provisions, applicable to new employees only:

- 3.1 With effect 1 September 2013, new employees shall be paid a guaranteed wage of no less than 80% of the normal qualified gazetted wage rate applicable to current employees, subject to the following provisions:
- 3.2 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a minimum period of 3 years, unless the applicant employee agrees otherwise with his/her prospective employer.
- 3.3 The guaranteed wage rate as specified in sub-clause 3.1 above shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the qualified rate, provided the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1 September 2012, once a national framework agreement governing the incentive portion has been agreed.
- 3.4 The provisions of clause 3 of this circular is only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.

- 3.5 All other provisions of the industry's Main Agreement shall be applicable to new employees.
- 3.6 The closed shop shall be applicable to all new employees.
- 3.7 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to re-employ employees at the rates specified in sub-clause 3.1 above
- 3.8 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 3.9 Qualified employees shall be employed at the qualified rate, subject to sub-clause 3.2 above.
- 3.10 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party to party agreement, which was subsequently extended to non-parties and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus the annual increases, and subject to the companies at which they are employed meeting the compliant employment growth targets as set out in the 2011/2012 wage agreement.
- 3.11 Effective 1st September 2012, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.
- 3.12 The parties shall negotiate a national framework agreement at national bargaining council level, to give enabling effect to the plant level incentivised wage component as contemplated in sub-clause 3.3 of this agreement. This shall be finalised within a period of 4 months with effect from 1 October 2012 (excluding the annual shutdown period). Thereafter, companies who qualify for the provisions of clause 4 of the substantive agreement and who wish to implement it shall have a 2 month period to conclude plant-level incentive arrangements in terms of the provisions of the national framework agreement.
- 3.13 The deadlock breaking mechanism for the national framework agreement is either binding interest arbitration or, at the end of the prescribed period, the entire 80% dispensation falls away, unless other forms of deadlock breaking mechanisms are agreed between the parties.
- 3.14 Should the 80% dispensation fall away in consequence of the provision in sub-clause 3.13 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreement rate.
- 3.15 The deadlock breaking mechanism for operationalising the incentive component at plant level shall consist firstly of a facilitation process by a panel of experts jointly appointed by the employer and trade union parties to this agreement and if not resolved, by an advisory award by the panel, unless other forms of deadlock breaking mechanisms are agreed to between the parties.

3.16 The parties agree that the only outstanding issue pertaining to the national incentivised framework agreement is the deadlock breaking mechanism. The Parties agree to finalise this matter within two (2) weeks from the date of signing this agreement, failing which the provision of sub-clause 3.13 above will become effective.

- (4) Nothing in this part of the Agreement shall operate to unilaterally reduce the wage which was being paid to any employee at any time prior to or at the date of commencement of this part of the Agreement.
- (5) An employee employed as a conveyor feeder shall receive the wages prescribed for an employee of this class, plus 10 per cent.
- (6)
 - (a) Any increase in the wage to which a learner becomes entitled as a result of previous experience shall become payable on the accruing date unless the employee has been absent from work of his own accord for a period longer than seven days in the aggregate in any of the six-monthly qualifying periods provided for in this clause. The accruing date, when an increase of wage falls due to him, may be advanced to the equivalent of the number of days in excess of seven days that he has been absent from work of his own accord in any of his six-monthly qualifying periods.
 - (b) In the case of an employee who has yearly qualifying periods, the accruing date when an increase of wages falls due to him, may be advanced to the equivalent of the number of days in excess of 14 days that he has been absent from work on his own accord in any of his yearly qualifying periods.
- (7) Unless otherwise stated in this part of the Agreement, the Council shall be the sole forum for the purposes of negotiating matters regulated in this part of the Agreement, inclusive of the Sick Benefit Fund Agreement and the Provident Fund Agreement, and the trade union shall not seek to improve the remuneration of employees in the Industry nor seek to re-negotiate any matters which are regulated in the aforementioned Agreements during the periods of operation of such Agreements: Provided that-
 - (a) the trade union shall be entitled to submit demands to the employers' organisation for the sole purpose of commencing negotiations for any agreement if such agreement is intended to replace any of the aforementioned Agreements at the expiry of their respective periods of operation; and
 - (b) notwithstanding anything to the contrary contained herein, the remuneration of employees employed at a particular establishment may be negotiated between the employer of that establishment and his employees provided any improvement thereof is specifically linked to productivity improvement.

5. SHIFT ALLOWANCE

- (1) A twelve and a half percent (12½%) allowance shall be paid to all workers engaged in normal shift work calculated on the basic minimums.
- (2) normal shift work shall mean a regular pattern of rotating hours of work and/or a regular pattern of work which falls outside normal working hours and shall exclude work pertaining to a twilight shift.

6. TASK-WORK

Task-work is prohibited.

7. SHORT-TIME

- (1) Where short-time is being or has been introduced in any establishment, an employee who attends at the establishment on any day shall, unless he has prior to such date received notice that his services will not be required on such day, be employed for at least half a day or be paid half a day's wages *in lieu* thereof.
- (2) If, owing to slackness of trade, it is found impossible to work full-time, short-time shall be worked by distributing the work evenly, as far as practicable, in any section or department concerned.
- (3) When it is necessary to introduce short-time in any factory the clock cards shall be suitably endorsed in respect of each employee so affected.
- (4) The provisions of this clause shall not apply to watchmen.

8. PAYMENT OF WAGES AND OVERTIME

- (1) (a) An employer shall pay wages and other remuneration in sealed envelopes on which shall be reflected, or which shall be accompanied by a slip or statement showing-
 - (i) the name and Council number of the employee;
 - (ii) weekly rate of pay;
 - (iii) total hours worked;
 - (iv) date up to which payment is made;
 - (v) total amount contained in the envelope;
 - (vi) details of all deductions [in terms of subclause (6)]; and
 - (vii) the amounts paid in respect of work done on Sundays.

All such information shall be either machine-printed, or written in ink, or shall be clear carbon copy. Such payments shall be made in cash weekly on Fridays, during working hours, at the establishment of the employer within half an hour before the closing time of the establishment: provided that, where an employee's services do not terminate on the ordinary payday of the establishment concerned, any amounts due to him shall be paid immediately upon such termination. [This clause shall not apply to monthly-paid employees who are in receipt of at least R650 per month and clerical employees, who are provided for in paragraph (b) hereof].
 - (b) An employer shall pay wages to monthly paid employees who are in receipt of at least R650 per month and clerical employees who are engaged on a monthly basis, not later than the last day of each calendar month, or upon termination of their employment, if this should take place before the ordinary payday of the employee.
 - (c) In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.
- (2) On every day on which wages or other remuneration are payable in terms of subclause (1) (a)-
 - (a) every employer shall by 14:00 have available in cash in the establishment the full amount to be paid;
 - (b) the envelopes referred to in subclause (1) (a) shall be duly completed and sealed at least one hour before the closing time of the establishment.

C - 28

- (3) Where work is performed by employees organised in sets or teams, every employee shall be paid his earnings by the employer in whose establishment the work is performed or by his representative.
- (4) An employer shall pay to an employee who, during any part of any week, is employed on more than one class of work for which different weekly wages are hereby prescribed, the highest of such different weekly wages for the whole of such week.
- (5) An employee other than a watchman, engaged on night shift, shall be paid not less than the remuneration prescribed for his class of work in clause 4 of this part of the Agreement, plus 12½ per cent.
- (6) No employer shall make a deduction of any description from amounts due to an employee in respect of wages or overtime, except in the following circumstances:
 - (a) Whenever an employee is absent from work otherwise than on the instructions or at the request of his employer, a deduction proportionate to the period of his absence and calculated on the basis of the wage which such employee was receiving in respect of his ordinary hours of work at the time thereof may be made unless otherwise provided in this part of the Agreement;
 - (b) in any establishment where the regular weekly hours of work are less than 42½, the employee may be paid for the actual number of hours worked at the hourly rate: Provided that an employee shall be paid an amount not less than 40 times the hourly wage in respect of any week's work;
 - (c) deductions may be made by an employer for insurance or pension funds with the written consent of the employee;
 - (d) contributions to Council funds shall be deducted in terms of clause 25 of this part of the Agreement;
 - (e) deductions shall be made by the employer in terms of the Provident Fund Agreement of the Clothing Industry (Natal);
 - (f) the costs of scissors supplied to employees may be deducted;
 - (g) if, owing to the accidental stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wage of such employee only for the time lost which is in excess of one hour in respect of each stoppage;
 - (h) any amount which an employer is legally compelled or permitted to pay on behalf of any employee may be deducted;
 - (i) contributions to the Sick Benefit Fund shall be deducted in terms of clause 35 (3) of this part of the Agreement;
 - (j) deductions for trade union subscriptions shall be made in terms of clause 27 (2) of this part of the Agreement;
 - (k) where short-time has been introduced, the employee shall, subject to the provisions of clause 7 of this part of the Agreement, be paid for the actual time worked.

9. HOURS OF WORK AND OVERTIME

- (1) Hours of Work: A five day week shall be observed from Monday to Friday inclusive and the ordinary hours of work of an employee shall not exceed-
 - (a) 42½ hours, excluding meal intervals in any week from Monday to Friday, inclusive;
 - (b) 8½ hours on any day between the hours of 07:00 and 18:00;
 - (c) except that, in the case of an employee wholly engaged as a boiler attendant, the weekly

hours may be 45 and the daily hours may be 9.

- (2) (a) All hours of work in any day shall, except for meal intervals, be consecutive.
- (b) An employer shall not require or permit an employee to work more than five consecutive hours continuously without a meal interval of at least half an hour, provided that if such interval be for longer than half an hour, the period in excess of half an hour shall be deemed to be hours of work.
- (3) An employee shall be deemed to be working in addition to any period during which he is actually working-
- (a) during the whole of any interval in his work if he is not free to leave the workroom of his employer for the whole of such interval;
- (b) during any other period during which he is in the workroom of his employer:
- Provided that if it is proved that any such employee was not working and was free to leave the workroom during any part of any such period, the presumption provided for in this sub-clause shall not apply in respect of such employee with reference to that part of such period.
- (4) (a) All time worked-
- (i) in excess of the ordinary hours set out in clause 8 (1); or
- (ii) before 07:00 and after 18:00 on Monday to Friday, except in the case of boiler attendants, shall be deemed to be overtime.
- (b) No employer shall require or permit an employee to work overtime for more than-
- (i) 10 hours in any week;
- (ii) two hours on any day (Monday to Friday).
- (c) No overtime in excess of one and a half hours, from Monday to Friday, may be required or permitted of an employee unless the employer-
- (i) has given notice thereof to such employee the previous day;
- (ii) provides such employee with an adequate meal before he/she has to commence overtime or pays such employee an allowance of R5,00 in sufficient time to enable him to obtain a meal before the overtime is due to commence.
- (d) An employee shall not be required to work overtime without his consent and an employee shall not be dismissed by reason of his refusal to work overtime.
- (5) No overtime in excess of that stated in terms of clause 9 (4) (b) shall be allowed unless permission has been obtained, in writing, from the Council prior to the performance of such work. In cases of urgency, the Secretary may issue provisional authority, which shall be valid until the next meeting of the Council.
- (6) In respect of overtime worked an employer shall pay to-
- (a) an employee wholly or mainly engaged as a boiler attendant at a rate which is not less than one and a half times the weekly wage prescribed for an employee of his respective class of work divided by 45;
- (b) an employee who is employed as a piece-worker at a rate which is not less than 1½, times the piece-work rates or 1½ times his weekly wage divided by 42½, whichever is the greater;
- (c) all other employees, at a rate which is not less than one and a half times the weekly wage divided by 42½, provided that if overtime calculated on a daily basis differs from that calculated on a weekly basis, the basis more favourable to the employee shall be adopted;

C - 30

- (d) an employee in respect of overtime worked on a Saturday which is in excess of 4¼ hours or after 12h00 at double the ordinary hourly rate.
- (7) Sunday work. Whenever an employee works on Sunday with the written permission of the Council, his employer shall either-
- (a) pay to the employee-
- (i) if he so works for a period not exceeding four hours, not less than the ordinary remuneration payable in respect of the period ordinarily worked by him on a week-day; or
- (ii) if he so works for a period exceeding four hours, remuneration at a rate not less than double his ordinary rate of remuneration, in respect of the total period worked on such Sunday, or remuneration which is not less than double the ordinary remuneration payable in respect of the period ordinarily worked by him on a week-day, whichever is the greater; or
- (b) pay the employee remuneration at a rate not less than one and one-third times his ordinary rate of remuneration in respect of the total period worked on such Sunday and grant him within seven days of such Sunday one day's holiday and pay him in respect thereof remuneration at a rate not less than his ordinary rate of remuneration as if he had on such holiday worked his average ordinary working hours for that day of the week.
- (8) (a) There shall be installed and maintained in working order in every establishment-
- (i) one or more bells, or other audible signals, which shall operate automatically and indicate all times for starting and for stopping work;
- (ii) one or more time clocks for the clocking in and out of employees: Provided that an employee shall be paid for the time which the employee has worked notwithstanding that the employee has not clocked in or clocked out.
- (b) Unless written exemption is obtained from the Council or Exemptions Board in terms of clause 23, every employee shall, unless prevented by sickness or other unavoidable circumstances at the establishment, clock in and clock out every working day, and no employee may clock in for any other employee in such establishment.
- (9) (a) The employer shall grant to each employee rest intervals of not less than 15 minutes during the morning work periods and 10 minutes during the afternoon work periods. Rest intervals shall be granted as nearly as practicable to the middle of each morning and afternoon and such intervals shall be reckoned as part of the usual working hours, but no employer shall require an employee to perform work during such interval.
- (b) For the purposes of this sub-clause the first half of any normal shift of more than five hours shall be deemed to be a morning work period, and the second half of any such normal shift, an afternoon work period.
- (10) No employer shall allow an employee to work a night shift unless permission has been obtained in writing, from the Council, prior to the performance of such work.
- (11) An employer may, in order to make up time lost through not working on any day which is a normal working day, permit his employees to work overtime on any day except Sunday prior or subsequent to the day not worked at ordinary rates of pay, provided such working-in takes place within a twelve (12) calendar month period of the original day not worked.
- (12) The provisions of this clause shall not apply to watchmen, except as provided below:
- (a) (i) An employer shall grant to each of his watchmen one full day of rest during every seven consecutive days, but, if an employer requires or permits such an employee to work on his day of rest, the hours worked shall be deemed not to be part of the ordinary hours of work, and the employee shall be paid for such work an amount of not less than double his daily wage;
- (ii) an employer shall grant his watchmen, other than a daily employee, not less than six days of rest in every six consecutive weeks of employment.

- (b) Provided that-
- (i) an employer shall make no deduction from the watchman's wage in respect of days of rest;
 - (ii) an employer may, *in lieu* of granting his watchman any such day of rest, pay him double his daily wage in respect of each such day of rest not granted;
 - (iii) where a watchman's contract of employment terminates before he has been granted all the days of rest to which he has become entitled by virtue of this sub-clause, his employer shall pay him in respect of each such day of rest not granted an amount of not less than his daily wage;
 - (iv) for the purposes of this sub clause the expression "day of rest" means a period of 24 consecutive hours calculated from the time the watchman normally commences duty, and "daily wage" means the employee's weekly wage divided by six.

(13) Twilight Shift

- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:
- (i) Only unemployed people may be recruited for working this shift.
 - (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
 - (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
- (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
 - (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
 - (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.
- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:
- (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
 - (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

(14) **Aggregation of Overtime**

For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 9(1) of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
 - (ii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
 - (iii) time not worked as a result of the employer having declared short time;
 - (iv) time not worked as a result of the employee being on authorised shop steward stewards time off; and
 - (v) time not worked as a result of any authorised absenteeism.
- (15) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

10. PUBLIC HOLIDAYS

- (1) For the purposes of this clause, "public holiday" shall mean a public holiday as defined in the Public Holidays Act, 1994, and includes the remainder of the day following the first 4½, hours after starting time on the Thursday before Good Friday.
- (2) If an employee does not work on a public holiday [as defined in subclause (1) above]-
- (a) which falls on a day which otherwise is an ordinary working day for him, his employer shall pay to him in respect of that public holiday an amount not less than the remuneration payable to him in respect of the time (excluding overtime) which is ordinarily worked by him on that day of the week;
 - (b) which falls on a Saturday or during the period of annual leave referred to in clause 14, his employer shall pay to him in respect of that public holiday an amount not less than one fifth of his ordinary weekly wage.
- (3) Whenever an employee works on a public holiday which otherwise is an ordinary working day for him, his employer shall pay him remuneration at a rate not less than his ordinary hourly wage in respect of the total period worked on that public holiday in addition to the remuneration he would ordinarily have received [as set out in subclause (2) (a) above].
- (4) Whenever an employee works on a public holiday which otherwise is not an ordinary working day for him, his employer shall pay him-
- (a) either an amount at least equal to the remuneration payable to him in respect of the time (excluding overtime) ordinarily worked by him on a working day; or
 - (b) remuneration at a rate not less than his ordinary hourly wage in respect of the total period worked on that public holiday, whichever is the greater, in addition to an amount not less than one fifth of his ordinary weekly wage.
- (5) Remuneration payable to an employee in terms of subclauses (2), (3) or (4) shall be paid out to him no later than the payday next succeeding the day in respect of which such remuneration is payable.

11. RECORDS

- (1) All records with regard to wages required to be kept in terms of Section 32 of the Unemployment Insurance Act, 1966, or in terms of this part of the Agreement, shall be completed by 12:00 on each Friday.
- (2) Every employer shall keep as part of his records a clock card to be used in connection with the time clocks referred to in clause 9 (8) in respect of each employee for each week or part of a week for which wages are due and payable, such clock card to form the basic document for the computation of remuneration.
- (3) All clock cards, or other types of records, shall, in accordance with the requirements of section 31 of the Basic Conditions of Employment Act, 1997 be kept for a period of three years subsequent to the date of the record and, on request, shall be available for the inspection by an agent of the Council.
- (4) In addition to the powers of the agents of the Council as set out in clause 30 of this part of the Agreement and section 33 (3) read with section 142 of the Act, the agent(s) may at any time, for the purpose of ensuring that the provisions of the Act and this part of the Agreement are being complied with-
 - (a) cause to be investigated any books, records or documents of any employer, whether or not the same are required to be kept in terms of any law and whether or not the same are at any establishment;
 - (b) take and retain copies of any such books, records or documents.

12. WORK IN THE CLOTHING INDUSTRY

- (1) No employer shall require his employees to work and no employee shall work in premises other than an establishment provided, equipped, maintained and controlled by such employer, and which shall be registered with the Council in terms of Clause 19 of this part of the Agreement.
- (2) An employer shall not allow any work in the Clothing Industry to be performed in a dwelling-house.
- (3) No employee engaged in the employ of one establishment may perform work in another establishment without first having been discharged by the first establishment and re-registered by the second establishment.

13. PROPORTION OR RATIO OF EMPLOYEES

- (1) Cutters: Every employer shall employ a head cutter before employing any cutters: Provided that in a factory where 30 machines or less are operated and where the employer performs the duties of a head cutter in his establishment he need not employ an employee of the said class. Any such employer shall, however, employ an assistant head cutter before employing any cutters.
- (2) No employee who has been absent from work for a continuous period of four weeks for any reason except illness, shall be taken into account when calculating ratio.

14. ANNUAL LEAVE

- (1) (a) Every employer shall grant to each of his employees, whether employed on piece-work or on time-work, who has been in his employ for a continuous period of not less

C - 34

than 12 months, not less than three consecutive weeks' annual leave, between 15 December and 15 January annually, at 15 days' wages. For the purposes of this sub clause a "day's wage" shall mean the weekly wage divided by five. No such employees shall be paid less than three weeks' wages as annual leave pay.

- (b) Every employer shall prior to 30 November of each year advise the Council of the dates during which his factory will be closed for annual leave.
- (2)
- (a) Save as provided for in subclause (3) (d) every employer shall lodge with the Council a guarantee acceptable to the Council to cover the payment of holiday pay due to his employees, alternatively forwarded monthly to the Secretary of the Council, P.O. Box 18354, Dalbridge, 4014, holiday pay due to each of his employees, at the rate of one and one-quarter of a day's pay for each completed 30 days of service, such payments to be made not later than 10 days after the end of each calendar month to which it refers: Provided that the holiday pay for the months November and December shall be forwarded to the Secretary of the Council not later than 7 December of each year and the total of such holiday pay shall be distributed by the Council to the employees concerned not later than 24 December of that year.
 - (b) An employee whose service are terminated before the date on which leave is to granted in terms of subclause (1) (a) shall be paid holiday pay amounting to one and a quarter of a day's pay for each completed 30 days' service. Such holiday pay shall, in the case of an employer who has put up an approved guarantee in terms of subclause (2) (a) be paid by the employer upon the date the employee's services are terminated. Where the employee's holiday pay has been paid to the Council as provided for in subclause (2) (a) the holiday pay shall be paid to the employee by the Council within a period of three weeks from the date on which application for payment is made to Council. Holiday pay shall not be due or payable to a person who has deserted from service.
 - (c) An employer shall grant to an employee who at the date of granting leave has not completed 12 months' continuous employment with him, leave for a similar period to that referred to in subclause (1) (a): Provided that in the case of an employer who has put up an approved guarantee in terms of subclause (2) (a), he shall only pay the employee holiday pay at the rate of one and a quarter of a days' pay for each completed 30 days' service.
 - (d) For the purposes of subclause (2) "days of service" shall mean calendar days.
- (3)
- (a) All holiday pay received by the Council shall be held in trust. The difference between holiday pay paid by the Council to employees in terms of subclause 2(a) and (b), and the amount of holiday pay paid by the employer to the Council in terms of subclause 2 (a) shall be refunded to the employer not later than 31 January of the following year.
 - (b) A list of employees who are to be paid holiday pay by the employer as provided for in subclause (1) (a) hereof, showing Council number, name, rate of pay, period of employment for which holiday pay is due and amount of holiday pay due to each such employee shall be forwarded by the employer to the Council not later than 7 December of each year.
 - (c) Whenever a guarantor advises the Council that a guarantee for holiday pay is to be withdrawn, the Council shall notify the employer, in writing, of such withdrawal and the employer shall within the notice period give by the guarantor lodge a fresh guarantee with the Council in terms of subclause (2) (a).
 - (d) All guarantees furnished to the Council in terms of a previous published agreement shall be deemed to have been furnished in terms of this part of the Agreement.
- (4) An employer who closes his factory for any period between 15 December and 15 January in order to grant his employees their annual holiday plus statutory holidays, may close for a period not exceeding four weeks without being liable for the payment to any employee of any wages in excess of the amounts due in terms of subclause (1) hereof, in respect of such period.

- (5) An employer, having reached agreement with his employees and having notified the Council accordingly, may close his factory for less than the three-week annual holiday period; provided that he closes his factory for not less than two weeks: Provided further that the additional one week's holiday is taken by employees before 30 June of the following year. Employees shall be paid for leave when it is taken.
- (6) Any period during which an employee-
- (a) is on leave in terms of this clause; or
 - (b) is absent from work on the instructions or at the request of the employer; or
 - (c) is absent from work owing to illness, shall be deemed to be a period of employment for the purposes of subclause (1) and (2) hereof, provided that-
 - (i) the provisions of paragraph (c) shall not apply in respect of any period of absence owing to illness of more than three consecutive days if the employee, not being an employee referred to in subparagraph (iii) and fails, after a request for such certificate by the employer, to submit to the employer a certificate issued by a Sick Benefit Fund medical officer appointed in terms of clause 35 stating that the employee was prevented by illness from doing his work (although clerical employees may produce such certificate from any practitioner); and
 - (ii) the provisions of paragraph (c) above shall not apply in respect of the part of any total period of absence exceeding 30 days during any 12 months of employment; and
 - (iii) an employee whose employer is required in terms of any Act of Parliament to provide for the care and treatment of such employee when sick or injured shall not be required to submit a certificate by a medical practitioner in respect of any period of absence referred to in subparagraph (i).
- (7) An employer may make mutual arrangements with: his employees in receipt of R650 per month or more, clerical employees, drivers of motor vehicles, foremen, mechanics, watchmen, or employees solely engaged in cleaning premises or in the delivery of goods or messages, to take their annual leave at a period other than between 15 December and 15 January: Provided that such leave shall be granted within two months of the completion of the year of employment to which it relates.
- (8) Where the Council holds holiday pay on behalf of an employee, who ceased to be employed in the Clothing Industry during the course of that calendar year, for a period of six months from the date on which it became due to such employee or to the end of that calendar year, whichever is the later, such holiday pay shall be refunded to the employer if unclaimed within the said period: provided that an employee may make application to the Council for payment of his holiday pay after expiry of the said period and such application shall be considered by the Council on its merits.
- (9) All payments for leave to which an employee is entitled under subclauses (1) to (10) shall be made at the employees actual rate of pay.
- (10) Holiday pay due to employees at the end of each year in terms of this clause, shall be calculated at the rate of pay an employee was earning when his leave commenced in December each year.
- (11) An employer shall give not less than 30 days' provisional notice and not less than 15 days' definite notice of the date of which annual leave will commence by exhibiting such notice(s) in a prominent place in the factory readily accessible to the employees.
- (12) The period of leave specified above shall not run concurrently with any period during which an employee is under notice of termination of employment.
- (13) Notwithstanding anything to the contrary contained in this clause, an employer may, in terms of an agreement between himself and his employees, set off against the period of annual leave any days of occasional leave granted on full pay to employees during the period of 12 months

employment prior to which the period of annual leave relates, provided that the occasional leave so granted shall not exceed two days.

15. HOLIDAY LEAVE BENEFIT (ANNUAL BONUS) FUND ACCOUNT

- (1) The Fund known as the Holiday Leave Benefit Fund Account for the Clothing Industry (Natal), originally established on 13 November 1992 in terms of Government Notice No. R. 310 is hereby continued, the purpose of which is to provide for an annual bonus to employees. The Fund Account is administered by the Council.
- (2) The Fund Account shall maintain individual employer accounts which shall consist of-
 - (a) contributions paid into the Fund Account in accordance with the provisions of this part of the Agreement;
 - (b) interest derived from the investment of any moneys of the Fund Account.
 - (c) any other moneys to which the Fund Account may become entitled.
- (3)
 - (a) For the purposes of the Fund every employer shall contribute 3,47% of an employee's weekly wage, which shall be forwarded monthly, no later than the 10th day of each month, to the Secretary of the Council.
 - (b) Such total sum must be accompanied by a list showing the Council registration numbers of the employees and the amounts contributed.
- (4)
 - (a) An employee is entitled to a benefit of 3,47% of the actual annual basic wages earned with the employer by whom he is employed on the day of factory closure: Provided that he is still in that employer's service. This benefit is payable to him in December of each year on the day of factory closure.
 - (b) A pro rata share of the bonus set out in paragraph (a) above shall be paid to an employee who leaves employment before the day of factory closure.
 - (c) This benefit is inclusive of and not additional to any annual bonus paid by an employer.
- (5) Notwithstanding the provisions of subclause (4), an employee shall not suffer a reduction in the amount of the annual holiday leave benefit as a result of periods of authorised absence from work.

16. MATERNITY LEAVE

- (1) Every employer shall acknowledge the right of an eligible employee to reasonable security of employment prior to, during and following confinement and notwithstanding anything to the contrary contained in this part of the Agreement, the following special provisions shall apply to such employee.
- (2) For the purposes of this clause unless a different meaning appears from the context-
 - (a) **"Continuous Service"** shall mean the period of employment during which an employee's name has remained continuously on the employers employment register.
 - (b) **"Eligible Employee"** means a permanent employee, who is or was pregnant and who has been in the continuous service of the same employer for a minimum period of twelve (12) months at the commencement of that employee's maternity leave, subject to the provisions of subclause (4) (b) below.
 - (c) **"Maternity Leave"** shall mean the period of leave to which an eligible employee is entitled by virtue of the provisions of this clause.
 - (d) **"Permanent Employee"** means an employee, other than a temporary employee, who is in continuous employment with an employer and whose conditions of employment are regulated by the provisions of the Main Collective Agreement.

- (e) **"Provident Fund"** shall mean The Clothing Industry (Natal) Provident Fund.
 - (f) **"Sick Benefit Fund"** shall mean the Sick Benefit Fund as provided for in clause 35 of this part of the Agreement.
 - (g) **"Temporary Employee"** means an employee other than a permanent employee whose employment contract is for a fixed predetermined period of time.
- (3) An employee shall not be permitted to work during the period commencing four (4) weeks prior to the expected date of confinement and ending eight (8) weeks after the date of confinement.
- (4) (a) Subject to compliance with the provisions of this clause, an eligible employee proceeding on maternity leave shall be entitled to a maternity benefit payment equal to 3¼ weeks of such employee's wage rate; or where the employee's wage has been varied in accordance with clause 4 (8) (a), such wage rate as was applicable immediately prior to such variation (notwithstanding that the employee's Sick Benefit Fund contributions may have been calculated after such variation had been implemented). Such maternity benefit payment shall be paid by the Sick Benefit Fund: Provided that such payment is not made earlier than four (4) weeks prior to the expected date of confinement, as certified by a current medical certificate issued by the Sick Benefit Fund.
- (b) Maternity leave shall be for a maximum period of six (6) months in respect of the period before, during and after confinement.
 - (c) For the purpose of calculating length of service, maternity leave shall not be deemed to constitute a break in service other than as specified in this clause.
 - (d) Benefits which accrue to eligible employees arising from service e.g. annual leave and sick leave shall not accumulate during the period of maternity leave.
- (5) (a) If an eligible employee elects to continue contributing to the Provident Fund and /or Sick Benefit Fund during maternity leave, the employer must continue his reciprocal contributions.
- (b) Any benefits in terms of the Provident Fund and/or Sick Benefit Fund shall, subject to the rules of these funds, continue to accrue to a member.
- (6) (a) An employer shall upon the expiry of maternity leave continue to employ an eligible employee in the same job grade and at the same rate of pay that was applicable immediately prior to the commencement of maternity leave, or at the new appropriate wage for the applicable job grade whichever is the greater, provided that-
- (i) at the time of granting maternity leave, the employee indicates the intention to return to work by completing and returning to the employer a form published for the purpose by the Council;
 - (ii) such employee returns to work within a period of six (6) months calculated from the date of commencement of maternity leave;
 - (iii) where suitable vacancy does not exist for a similar position within the same grade, such employee shall be employed on a temporary basis at a lower job grade, but without affecting pay, until a suitable vacancy arises;
 - (iv) employment shall not be guaranteed where such employee has been selected for retrenchment on the basis of the criteria agreed between an employer and the union.
- (b) An eligible employee who intends to return to work shall-
 - (i) provide to an employer a medical certificate from a registered medical practitioner indicating that such employee is fit for work;
 - (ii) advise the employer in writing on a form published for the purpose by the Council, of the intention to return to work at least one (1) month before returning to work

confirming the date on which such employee will resume employment.

- (c) A temporary employee engaged to fill the position of an eligible employee on maternity leave shall cease to be employed when the eligible employee returns to work, unless a suitable vacancy exists in which event the temporary employee may be employed to fill that vacancy on a permanent basis.
- (d) An employee temporarily promoted and paid at the higher rate to fill a vacancy while an eligible employee is absent on maternity leave shall be demoted with consequent reduction in pay, when such employee returns to work, unless a suitable alternative vacancy exists.
- (e) The union agrees that it shall not challenge the termination of service of a temporary employee or the demotion of a temporarily promoted employee in terms of the above paragraphs (c) and (d), provided that the temporary or temporarily promoted has signed a temporary contract of employment or promotion, in keeping with the pro-forma contract drafted by the Council.

17. PATERNITY LEAVE

Male employees, regardless of marital status, shall be entitled, subject to prior arrangement, to a maximum of three days' unpaid paternity leave per annum. The employer is entitled to require proof of paternity.

18. PREMIUMS FOR TRAINING

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

19. REGISTRATION OF EMPLOYERS

- (1) Every employer who has not already done so in pursuance of a previous agreement at the date of coming into operation of this part of the Agreement and every employer who enters the Industry after that date shall within seven days of such date or on the date on which such employer commenced operations as the case may be forward to the Secretary of the Council, P.O. Box 18354, Dalbridge, 4014, by registered post, the following particulars which shall be in writing and signed by the employer or a person duly authorised to sign on behalf of the employer:
 - (a) The trading name, business address and registered address of the establishment;
 - (b) the full names and residential addresses of all partners and/or directors and/or members;
 - (c) the full name and residential address of the responsible manager;
 - (d) the section or sections of the Industry in which the establishment is engaged;
 - (e) date of commencing operations.
- (2) Written notification shall be sent by registered post to the Council by every employer of any alteration in respect of any details supplied in terms of subclauses (1) (a) to (e) of this clause, and such notification shall be given within 7 days of such alteration.
- (3) Save as provided in subclause (6), every employer in the Industry at the date of coming into operation of this part of the Agreement and every employer who enters the Industry after that date shall within seven days of such date or on the date on which such employer commenced

operations, as the case may be, lodge with the Council, and at all times thereafter have with the Council, a guarantee acceptable to the Council to cover payment of one week's wages as prescribed in clause 4 of this part of the Agreement for his employees and also to cover 12 weeks' levies; due in terms of clauses 25 and 35 of this part of the Agreement and clause 6 of the Provident Fund Agreement of the Council.

- (4) Whenever cash is deposited with the Council in terms of subclause (3) above, such money shall be invested in a savings account, permanent shares or fixed deposits in any registered bank or financial institution. Any interest accruing thereon shall be paid to the employer by the Council not later than 31 January of each year.
- (5) Whenever a guarantor advises the Council that a guarantee in terms of subclause (3) is to be withdrawn, the Council shall notify the employer, in writing, of such withdrawal and the employer shall within the notice period given by the guarantor lodge a fresh guarantee with the Council in terms of subclause (3).
- (6) All guarantees furnished to the Council in terms of a previous published agreement shall be deemed to have been furnished in terms of this part of the Agreement: Provided that the Council may at any time give the employer 14 days notice to the effect that any such guarantee is no longer acceptable and the employer shall within such period of 14 days lodge a fresh guarantee acceptable to the Council.

20. REGISTRATION OF EMPLOYEES

- (1) An employer shall, before engaging an applicant for work, require the applicant to produce a service card issued by the Council. If the applicant is a new entrant into the Clothing Industry or cannot produce a Council service card, the provisions of subclause (2) (c) below shall apply.
- (2) Upon engagement, the employer shall-
 - (a) enter in the relevant columns of the service card: the name of his factory, the date of engagement, occupation, wage on engagement and total previous experience and shall retain the card in safekeeping so that it can be dealt with in terms of subclause (4) of this clause upon termination of service of the employee; and
 - (b) complete a "Registration of Employee" form in triplicate, forward the original to the Council not later than Friday of that week, hand the duplicate copy to the employee and retain the triplicate copy for his records; and
 - (c) in the case of an employee who is a new entrant into the Industry or an employee who cannot produce a Council service card-
 - (i) complete the "Registration of Employee" form in triplicate and send the applicant with the original and duplicate copy to the Council offices where he will be allocated a Council registration number, issued with a Council service card and be registered in the employ of the employer. The triplicate copy shall be retained by the employer for his records;
 - (ii) the employer shall acquire the service card of the employee before he commences work and the employer shall retain same until the employee's services are terminated and the service card is dealt with in terms of subclause (4).
- (3) An employer shall forward to the Council for amendment the service card of any employee who is transferred from one category to another, the latter of which requires a higher rate of remuneration, within seven (7) days of such transfer.
- (4) The service card shall be retained by the employer until the employee leaves his employer, whereupon the employer shall enter on the card the date of termination of employment, the

C - 40

- occupation and the rate of pay on termination, and return the card to the employee after signing it.
- (5) On the Friday of the week during which an employee's services are terminated, the employer shall forward to the Council a report of termination of service.
- (6) The Council shall have the power to withdraw any record of service card which is subsequently found to contain incorrect information. The Council shall upon being furnished with the correct information, issue a fresh record card *in lieu* thereof.

21. TERMINATION OF SERVICE

- (1) An employer or an employee shall give, in writing-
- (a) in the case of a weekly-paid employee, not less than one week's notice of the intention to terminate the contract of employment, such notice to commence on the employee's ordinary pay-day;
- (b) in the case of a monthly-paid employee, not less than two week's notice of the intention to terminate the contract of employment, such notice to commence on the first or 15th day of the calendar month.
- (2) (a) An employer may terminate the contract of employment without notice by paying to the employee, *in lieu* of notice, an amount equal to not less than-
- (i) in the case of a weekly paid employee, one full week's wages; and
- (ii) in the case of a monthly paid employee, two weeks' wages.
- (b) An employee may terminate the contract of employment without notice by forfeiting wages and/or holiday pay due to him by the employer.
- (3) The provisions of subclauses (1) and (2) hereof shall not affect-
- (a) the right of an employee or employer to terminate the contract of service without notice for any good cause recognised by law as sufficient;
- (b) any agreement between an employer and employee which provides for a period of notice longer than one week, in which event wages *in lieu* of notice shall be correspondingly increased.
- (c) the right of an employee who is working short-time in any week on the instruction of the employer to terminate his contract of service at any time after such instruction has been given, without giving notice: Provided further that, in the case of an establishment in which short time is being worked in terms of clause 7, an employee who has been given notice by his employer in terms of this subclause shall be paid a full day's pay, in respect of every day during the period of such notice upon which he attends a such establishment and is available for work the whole day, or in respect of which he has been notified by the employer that his services will not be required;
- (d) the operation of any forfeitures or penalties which, by law, may be applicable in respect of desertion by an employee;
- (e) the right of an employee to withdraw such notice of his intention to terminate his contract of employment provided it is done in writing within two (2) working days of having been tendered.

- (4) An employer may terminate the contract of employment on grounds of incapacity where the employee has been absent from work due to ill-health or injuries for a period of time. In these circumstances-
- (a) the employer shall consider the following factors before terminating the contract of employment:
 - (i) Whether the employee is capable of performing the work; and
 - (ii) if the employee is not capable-
 - (a) the availability of any suitable alternative work;
 - (b) the extent to which the employee's duties and/or work circumstances might be adapted to accommodate disability;
 - (iii) alternatives to dismissal.
 - (b) An employee shall be allowed an opportunity to state his case and to be assisted by a trade union representative in the process of investigations referred to in paragraph (b) above.
 - (c) Provided that the provisions of this sub-clause shall not limit the employee's right to challenge his dismissal in terms of the Act.
- (5) 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 14.
- (6) This clause shall not apply to an employee during his first week of employment. Such an employee shall be paid for at least four hours, notwithstanding that such employee has worked for a lesser period during his first week of employment.
- (7) (a) Notwithstanding anything to the contrary contained in this part of the Agreement the first fifteen (15) working days of the period of employment of any employee shall be deemed to be a probationary period.
- (b) The dismissal of an employee during the probationary period shall be preceded by an opportunity for the employee to state his case in response and to be assisted by a trade union representative.

22. DISCIPLINARY AND GRIEVANCE PROCEDURES

- (1) Every employer shall permit the trade union to negotiate with it a disciplinary procedure and grievance procedure appropriate to its individual circumstances.
- (2) The provisions of this clause in terms of the implementation thereof may be read with the document headed "guidelines for the Implementation of Disciplinary and Grievance Procedures", which documents is available to employers and employees from the offices of the Council.

23. EXEMPTIONS

A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation, and in addition, shall set out the following information:
 - (a) The period for which the exemption is sought;
 - (b) the number of employees affected and how many of such employees are members of a registered trade union;
 - (c) the clauses and subclauses of this part of the Agreement from which the exemption is requested.
 - (d) Satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace and shall include the response resulting from such consultations.
 - (e) The demonstrable commercial need of the applicant for the exemption sought.
- (4)
 - (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
 - (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in sub-clause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been rejected.
 - (c) The Exemptions Committee may call for any further information or submissions it deems relevant from the applicant, prior to making a decision. The period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
 - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been refused.
 - (e) Subject to the time period for considering the application as provided in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been refused and the reasoning of the members of the Exemptions

Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.

- (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
 - (g) If the application has been granted or partially granted, the Exemptions Committee 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 exemption(s) will be valid;
 - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
 - (iv) the full name of the exempt employer or employee(s).
 - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
 - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred to appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the amount thereof: Provided that such a fee shall be consistent with-
- (i) the cost incurred for the hearing of the appeal; and
 - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall also have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
- (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.

- (d) The Exemptions Board's decision shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee, and where applicable, the Exemptions Board of the following:
- (a) There is a demonstrable commercial need for the exemption.
 - (b) Competitors covered by the Council that are in compliance with the applicable Council Agreements will not be materially prejudiced by the exemption.
 - (c) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor does the application if granted, result in a conflict with the primary objectives of the Act.
 - (d) The exemption will not undermine collective bargaining and labour peace in the Industry.
 - (e) There has been compliance with subclause (3) above.
 - (f) The majority of employees affected at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has put up a compelling case for the exemption.
 - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
 - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability.
 - (d) The terms of the exemption sought, including the period for which exemption is sought
 - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
 - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
 - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
 - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.

- (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
 - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
 - (k) What hardship may eventuate to employees in the event of the exemption being granted.
 - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
 - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.

24. PERSONS UNDER THE AGE OF 15 YEARS

No employer shall employ any person under the age of 15 years.

25. COUNCIL FUNDS

The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.

- (1) Every employer shall deduct an amount equal to 0.2585% of each employee's wages per week, calculated at the qualified machinists rate of pay, (other than employees exempted from the provisions this clause by the Council, in writing, in terms of clause 23) for whom minimum wages are prescribed in the Agreement. This equates to R2,32 per week payable by means of deduction from the employee's wages.
- (2) An employer shall, in respect of each contributor from whose wages deduction are made in terms of subclause (1) above, contribute an amount equal to 0.35% of each employee's wages per week payable by the employer. This equates to R3,16 per week employers contribution.
- (3) The total amount deducted in terms of subclause (1) above together with employers contribution in terms of subclause (2) above, shall be forwarded by the employer to the Regional Secretary of the Regional Chamber of the Council, not later than ten days after the end of each calendar month, together with a list showing registration numbers of employees detailing particulars of contributions to P O Box 18354, Dalbridge, 4014.

26. SACTWU FUNDS

- (1) Every employer shall, in respect of each trade union member employed by him, contribute an amount of 29 cents per week towards the Trade Union Bursary Fund which is administered by SACTWU for the benefit of employees in the Industry.
- (2) Every employer shall also, in respect of each of his employees for whom Bargaining Council contributions are paid in terms of clause 25 of this part of the Agreement, contribute towards the trade union's HIV/AIDS Project at the rate of 42 cents per week.
- (3) The total contribution by the employer in respect of subclauses (1) and (2) shall be forwarded to the Council not later than the 10th day of the month following that in respect of which the contributions were made, together with a list detailing employee Council numbers and particulars of contributions.
- (4) Whenever proceedings are instituted against an employer for failure to pay outstanding contributions to the SACTWU bursary fund and HIV/AIDS Project, the employer shall pay interest on such amounts outstanding, calculated from the date or dates when such amounts became due and payable, at the bank prime rate prevailing on that date.

27. CLOSED SHOP AND TRADE UNION MEMBERSHIP/SUBSCRIPTIONS

- (1) No employer who is a member of an employers' organisation (which is a party to the Council), shall continue to employ an employee -
 - (a) who, while being eligible for membership of the union, is not a member of the union as at the date of coming into operation of this part of the Agreement; or
 - (b) who does not become a member of the trade union within a period of 90 days from such date.
 - (c) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the union or employers' organisation or who have been refused membership of or expelled from the union or employers' organisation.
- (2) Every employer shall forward all deductions made from the remuneration of employees in respect of union membership fees to the Secretary of the KwaZulu-Natal Regional Chamber of the Council not later than the 10th day of the month following that in respect of which the contributions were made, together with a list detailing employee Council numbers and particulars of contributions. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers by not later than the end of the month in which the fees were received.
- (3) For this part of the Agreement no union membership subscriptions may be -
 - (a) paid to a political party as an affiliation fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.
- (4) Provided further that the provisions of section 26(3)(c) of the Act shall be observed by the parties to the Council and to whom this clause is applicable.

- (5) The production of a membership card issued by the trade union shall be proof of membership of the trade union.

28. ACCESS TO AND ORGANISING FACILITIES ON AN EMPLOYERS' PREMISES BY THE TRADE UNION

- (1) Every employer shall permit duly accredited trade union officials who are so authorised in writing by the Council, to enter its premises in order to undertake *bona fide* union business provided that-
- (a) the employer reserves the right of admission to its premises as proprietor or occupier thereof;
 - (b) such access shall be by prior arrangement with the employer;
 - (c) union officials comply with the employer's prevailing security, safety and health rules;
 - (d) meetings with employees are held outside their working hours.
- (2) (a) Every employer shall allow the distribution of the Union newspaper on its premises and shall provide the trade union with notice board facilities for the display of union notices, subject to the prior approval of the employer of every notice displayed.
- (b) Should the employer not approve a notice or document which it is proposed to display or distribute, which approval shall not be unreasonably withheld, it shall be withdrawn from the employer's premises by the union immediately.
- (3) Where available and commensurate with the individual circumstances and the size of an establishment, every employer shall provide to the union shop stewards reasonable facilities to enable them to discharge their *bona fide* trade union duties in respect of such employer, including the use of a telephone and a meeting venue, provided that the use of such facility shall be subject to prior permission being sought and obtained from the employer and that during normal working hours there shall not be unnecessary disruption to an employers operations.
- (4) A document entitled: Guidelines for the Implementation of the Provisions of clause 28 of the Main Agreement, is available to employers and employees from the offices of the Council.
- (5) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.

29. RIGHTS OF TRADE UNION REPRESENTATIVES

- (1) Every employer shall permit the election of shop stewards by union members in terms of section 14 (1) of the Act.
- (2) The nomination, election, terms of office and removal from office of a shop steward shall be governed by the trade union constitution, as lodged with the Registrar of Labour Relations in terms of section 96 of the Act.
- (3) Every employer shall recognise the right of shop stewards to assist and represent employees who are union members in grievance and disciplinary proceedings.
- (4) Duly elected shop stewards are each entitled to ten working days paid leave per calendar year pooled per establishment to be used at the discretion of the trade union for *bona fide* trade union activities, provided that the employer is given at least ten (10) working days prior notice thereof. (For the purpose of this clause a "working day" shall mean any day excluding a Saturday and Sunday, a public holiday in terms of this part of the Agreement and the period of annual shut-down).

- (5) A document entitled: "Guidelines for the election and rights of shop stewards" is available to employers and employees from the office of the Council.
- (6) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

30. AGENTS

- (1) The Council may request the Minister of Labour to appoint one or more specified persons as designated agents to assist in enforcing the terms of this part of the Agreement.
- (2) Any such designated agent shall have the right to-
 - (a) subpoena for questioning any person who may be able to give information relevant to the enforcement of this part of the Agreement;
 - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the enforcement of this part of the Agreement, to appear before the agent to be questioned or to produce that book, document or object;
 - (c) enter and inspect any premises or place in which the Clothing Industry is carried on at any time when he has reasonable cause to believe that any person is employed therein, or that a book, document or object relevant to the enforcement of this part of the Agreement may be found on or in the premises;
 - (d) examine and demand the production of and seize of any notice, book, list or document which is by this part of the Agreement required to be kept, exhibited or made or which is relevant to the enforcement of this part of the Agreement;
 - (e) require the production of, inspect, examine and copy all records of time worked, clock cards, books or documents wherein an account is kept of time worked or actual wages, or rates whether payable for piece-work or not, paid to any employee whose wages are fixed by this part of the Agreement;
 - (f) take a statement in respect of any matter relevant to the enforcement of this Agreement from any person on the premises who is willing to make a statement.
- (3) A subpoena issued for any purpose in terms of subclause (2) shall be signed by the Secretary of the Council and shall-
 - (a) specifically require the person named in it to appear before the 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.
- (4) A designated agent shall obtain written authorisation from the Secretary of the Council before exercising the powers referred to in paragraphs (c), (d) and (f) and subclause 2.
- (5) Such designated agent when entering, inspecting or examining any such place, may take with him an interpreter.
- (6) Every employer and employee upon whom the provisions of this part of the Agreement are binding shall grant to such designated agent all the facilities referred to above.

31. EXHIBITION OF AGREEMENT, WAGE RATES AND HOURS OF WORK

- (1) Every employer shall keep a legible copy of this part of the Agreement exhibited in his establishment in a place readily accessible to his employees.
- (2) Every employer shall give a copy of this part of the Agreement-
 - (a) to an employee who has paid the prescribed fee; and
 - (b) free of charge, on request, to an employee who is a trade union representative.
- (3) One or more notices, provided by the Council, showing wage rates payable in the Clothing Industry in Natal shall be prominently displayed by every employer in such place or places as may be indicated by the agent.
- (4) Every employer shall display in his establishment in a place readily accessible to his employees a notice specifying the starting and finishing time of work for each day of the week and the meal intervals.

32. ADMINISTRATION OF AGREEMENT

The Council shall be the body responsible for the administration of the Agreement, and may issue expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.

33. TRADE UNION'S REPRESENTATIVES OF THE COUNCIL

Every employer shall give to any of his employees who are representatives on the Council every reasonable facility to attend to their duties in connection with the work of the Council: Provided that in establishment employing five or fewer employees the trade union shall give the employer five working days written notice of its request for time off in terms of this clause, for its representative.

34. WORKING PROPRIETORS AND / OR WORKING PARTNERS

Working proprietors and/or working partners engaged in manufacturing operations in the Clothing Industry and who are employers shall observe the working hours laid down in clause 9 of this part of the Agreement.

35. SICK BENEFIT FUND

- (1) The Sick Benefit Fund (hereinafter referred to as the "Fund") established under Government Notice No. 1845 of 11 November 1938, is hereby continued. The Fund shall be maintained from levies in terms of subclause (3) hereof.
- (2) Within two weeks of an employee entering the Industry he may, at the discretion of the Management Committee, be required to present himself to one of the Fund's medical officers for a medical examination and shall complete forms giving his past medical history. The Management Committee referred to in subclause (6) (a) may thereafter exclude such employee from receiving benefits for any illness due to chronic ailment: Provided that an employee may appeal against such exclusion to the Council whose decision shall be final.
- (3) Subject to subclause (14), an employer shall deduct 1,5% per week of the wage of each employee who has worked during that week, irrespective of the time worked.

C - 50

- (4) (a) In addition to the amounts so deducted, the employer shall contribute 1,75% per week of the employee's wage in respect of each employee who has worked during that week, irrespective of the time so worked.
- (b) The employer shall add his contribution to that deducted from each employee's weekly earnings and shall forward this total to the Secretary of the Fund, P.O. Box 18354, Dalbridge, 4014, so as to reach the said Secretary not later than 10 days after the end of each calendar month, together with a list showing the Council registration numbers of the employees and the amounts.
- (5) (a) The fund shall be applied to provide employees with medical treatment, medicine and sick pay in case of illness.
- (b) The Council shall contribute R150 000,00 from the Fund to HIV/AIDS education and treatment programmes during the period of operation of this Amending Agreement.
- (6) (a) The Fund shall be administered by a Management Committee consisting of one representative each from the employers and employees appointed by the Council, together with the Chairman and Vice-Chairman of the Council, who shall be *ex officio* members of the Management Committee, who may make regulations not inconsistent with the provisions of this clause.
- (b) For each representative an alternative shall be appointed.
- (c) All the decisions of the Management Committee shall be subject to ratification by the Council.
- (7) For the purpose of benefits, sickness shall mean any illness, affliction or disease including pregnancy of employees who are eligible for maternity benefits in terms of the Unemployment Insurance Act, 1966, but excluding-
- (a) venereal disease and illness, affliction or disease which is attributable to misconduct or excessive indulgence in intoxicating liquors or drugs; and
- (b) any accident, illness or disease in respect of which compensation is payable in terms of the Compensation for Occupational Injuries and Diseases, 1993.
- (8) (a) Payment of benefits shall be subject to the production of a certificate of absence from work to which shall be attached a medical certificate signed by one of the Fund's medical officers.
- (b) The Management Committee has the right to require the claimant for benefits to submit himself to such of the fund's medical officers as it may direct.
- (c) Every employer shall complete a certificate of absence from work for each employee who has been off from work through illness and who has produced a medical certificate from a hospital, or a medical officer of the Fund. The employer shall forward such absence from work certificate together with the medical certificate to the Secretary of the Council, P.O. Box 18354, Dalbridge, 4014.
- (9) An employee who has contributed to the Fund for 13 weeks shall, subject to the provisions of subclause (7) and (8) hereof, be entitled to the following benefits during the currency of this part of the Agreement: Provided that the amount standing to the credit of the fund is not less than R200:
- (a) Free medical attention (excluding surgical treatment and maternity cases, save where these are approved in whole or in part by the Management Committee, and venereal diseases) by the medical officer(s) appointed by the Management Committee.
- (b) Free medicine when prescribed by the Fund's medical officer(s): Provided that such are made up by a chemist(s) specified by the Management Committee, or the Sick Benefit Fund Clinic.
- (c) In any one calendar year, sick pay equal to half a day's wage prescribed in clause 4 for each day of absence from work through illness to a maximum of forty (40) days' absence.

Provided that a member shall not be entitled to any sick pay whatsoever in respect of a period of absence of two days or less unless they constitute the first two days of a period of not less than three continuous days' absence, in which case such members shall receive for a period of absence which is limited to three days, one day sick pay. No claim for sick pay shall be recognised if lodged after the expiry of six calendar months, calculated from the date of fitness for work indicated on the medical certificate. In cases of permanent unfitness, the period of six months shall be calculated from the last day in respect of which sick pay is due.

- (d) Contributors become unemployed shall remain eligible for membership of the fund, and, while unemployed, shall be entitled to the benefits prescribed in paragraph (a) and (b) for the following periods:

	Weeks
Those with one year but not exceeding two years' service	6
Those with more than two years but not exceeding five years' service	12
Those with more than five years but not exceeding ten years' service	18
Those with more than ten years' service in each cycle of one year	24

- (e) Should a contributor's period of unemployment exceed that specified in paragraph (d) he shall be required to be employed in the Clothing Industry and contribute to the Fund for a further period of 13 weeks after restarting in the Industry before again becoming eligible for benefits.
- (10) An member who was employed within the Clothing Industry, Natal, for at least 20 years and whose employment was terminated due to ill health or old age shall be entitled to receive medical service upon payment of a R5,00 user charge due to the fund, until the member reaches the age of 65 years.
- (11) In the event of the expiry of this part of the Agreement by effluxion of time or cession or any other cause, the Fund shall continue to be administered by the Management Committee until it be either liquidated or transferred by the Council to any other Fund constituted for the same purpose as that for which the original Fund was created: Provided that the fund shall be liquidated unless an agreement providing for the continuation of the Fund or for the transfer of its moneys as aforesaid, is entered into within 12 months of the date of expiry of this part of the Agreement.
- (12) In the event of the dissolution of the Council or in the event of its ceasing to function during any period in which this part of the Agreement is binding, the Management Committee shall continue to administer the Fund and the members of the Committee existing at the date on which the Council ceases to function or is dissolved shall be deemed to be members thereof for such purposes: Provided, however, that any vacancy occurring on the Committee may be filled by the Registrar of Labour Relations from employers or employees in the Industry, as the case may be, so as to ensure an equality of employer and employee representatives and of alternatives in the membership of the Committee. In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar, he may appoint a trustee or trustees to carry out the duties of the Committee and who shall possess all the powers of the Committee for such purpose. In the event of no Council being in existence the Fund shall upon the expiry of this part of the Agreement be liquidated by the Committee or the trustee, as the case may be, in the manner set forth in subclause (11) of this clause, and if upon such expiry the affairs of the Council have already been wound up and its assets distributed, the balance of the Fund as if it formed part of the general funds of the Council.
- (13) Upon liquidation of the Fund in terms of subclause (11) the moneys remaining to the credit of the Fund after the payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the general funds of the Council.

- (14) The Management Committee shall have the right to exclude from all the provisions of this clause any employee who, in its opinion, has abused the privileges of the Fund: Provided that an employee may appeal against such exclusion to the Council whose decision shall be final.

36. RETRENCHMENT

- (1) For the purposes of this clause "retrenchment" shall mean the dismissal of an employee for reasons based on the employer's operational requirements.
- (2) The employer shall endeavour to avoid retrenchments by transferring workers to other departments, by training or retraining, by limiting and/or eliminating overtime, working short-time, allowing voluntary retirement and such other suitable alternatives.
- (3) The employer shall furnish Council and the Union with the following information:
- (a) The reasons for the proposed retrenchments;
 - (b) approximate number of employees to be retrenched and the job categories in which they are employed;
 - (c) the proposed method for selecting which employees to dismiss;
 - (d) the date when the dismissals are likely to take effect;
 - (e) the severance pay proposed.
- (4) The employer shall consult with the Union on the need and extent of the proposed retrenchment and the fairness of selection of employees to be retrenched:
- (a) An employer must pay an employee who is retrenched severance pay equal to one weeks wage for each completed year of continuous service with that employer, unless the employer has been exempted from the provisions of subclause.
 - (b) An employee who unreasonably refused to accept the employer's offer of alternative employment with that employer or any other employer is not entitled to severance pay in terms of paragraph (a) above.
- (5) (a) The employer shall give the Council and the Union at least 21 days written notice provided that the Union and the employer may reduce the period of notice by mutual agreement which agreement shall not be unreasonably withheld.
- (b) The notice shall not run concurrently with the Annual Shutdown period of the employer's establishment.
- (6) Where an employer has retrenched employees he shall, if he subsequently engages additional employees, as far as is possible, give preference to the reengagement of those employees who were retrenched from his establishment within the previous 6 (six) months.

37. FINANCIAL MATTERS

- (1) The Council shall, in accordance with the standards of generally accepted accounting practice, principles and procedures-
- (a) keep books and records of the income, expenditure, assets and liabilities of the Funds referred to in clauses 14 (3) (a), 15 and 35 and of the Council;
 - (b) within six (6) months after the end of each financial year, prepare financial statements including-

- (i) a statement of income and expenditure for the previous financial year; and
 - (ii) a balance sheet showing its assets, liabilities and financial positions as at the end of the previous financial year.
- (2) (a) The Council shall arrange for an annual audit of the books and records of account and the financial statements of the funds referred to in clauses 14 (3) (a), 15 and 35 and of the Council;
- (b) the auditor appointed by the Council shall--
 - (i) be registered to practice in the Republic of South Africa as a public accountant and auditor;
 - (ii) conduct the audit in accordance with generally accepted auditing standards; and
 - (iii) report in writing to the Council: Which report shall include the auditor's opinion as to whether or not the Council has complied with those provisions of its constitution related to financial matters.
- (3) The financial statements and auditor's reports shall be--
 - (a) available to the parties to the Council or their representatives for inspection;
 - (b) submitted to a meeting of the Council;
 - (c) provided to the Registrar of labour relations within thirty (30) days of receipt of the auditor's report.
- (4) All monies referred by the funds referred to in clause 14 (3) (a), 15 and 35 shall be deposited into a banking account opened in the name of the Fund. Withdrawals from the Fund shall be by cheque signed by a person duly authorised by the Council.
- (5) The money of any Fund referred to in clauses 14 (3) (a), 15 and 35 that is surplus to that Fund's requirements or the expenses of the Fund may be invested in--
 - (a) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
 - (b) a registered unit trust;
 - (c) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975; and
 - (d) any other manner approved by the Registrar of labour relations.
- (6) All expenses of administration, banking and auditing shall be a charge against that Fund.

38. DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
 - (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
 - (b) The Council shall, from time to time, adopt by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.
 - (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such

Regional Chamber shall have the same rights, powers and obligations as the Council.

(2) Accreditation:

- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
- (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

(3) Panel of conciliators, arbitrators and senior arbitrators:

- (a) The Council shall appoint
 - (i) a panel of conciliators, for the purpose of conciliating disputes;
 - (ii) a panel of arbitrators, for the purpose of determining disputes;
 - (iii) a panel of senior arbitrators, for the purpose of determining disputes where:
 - (aa) the nature of the questions of law raised by the dispute;
 - (bb) the complexity of the dispute;
 - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
 - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
 - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.
 - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
 - (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' lists shall 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 General Secretary of the Council shall draw the name of the remaining appointee.

- (d) The arbitrators and senior arbitrators are to be appointed to the relevant 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 arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3) (d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
 - (i) for serious misconduct; or
 - (ii) owing to incapacity; or
 - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3) (c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3) (1), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

(4) *Disputes involving non-parties to the Council:*

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council, shall be resolved by the Council in accordance with the following procedure:

(a) *Referral and conciliation of disputes*

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation

within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.

- (iv) The conciliator may, during conciliation proceedings
 - (aa) mediate the dispute;
 - (bb) conduct a fact-finding exercise; and
 - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4) (a) (iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

(b) Adjudication of disputes referred to the Council for arbitration:

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if-
 - (aa) the Act requires that the dispute be arbitrated; or
 - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) 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 the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to-

- (aa) give evidence;
 - (bb) call witnesses;
 - (cc) question the witnesses of any other party;
 - (dd) address arguments to the arbitrator;
 - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.
 - (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
 - (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
 - (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord; and without limiting the generality thereof, 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;
 - (bb) the award is ambiguous or contains an obvious error or omission;
 - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
 - (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
 - (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

(5) Disputes involving parties to the Council-

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council which the Act requires to be arbitrated

or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to subclause (5) (d) below.

- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

(6) Compliance procedure and enforcement of collective agreements by Council-

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
- (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber.
- (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by, the Council, where these exist, by-
- (aa) publicising the contents of the agreement;
- (bb) conducting inspections;
- (cc) investigating complaints;
- (dd) endeavouring to secure compliance with the agreement through conciliation; or
- (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
- (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
- (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.

- (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclause (4) (b) (v) to (4) (b) (xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including-
 - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
 - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
 - (cc) charging a party to the arbitration an arbitration fee;
 - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
 - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
 - (ff) any award contemplated in section 138 (9) of the Act;
 - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of subclause (6) shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure shall stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

(7) Non-Compliance

- (a) Outsourcing to non-compliant companies shall not be permitted in the industry.
- (b) The parties shall enter into agreements with all Provincial and Local governments which shall have the effect that their sourcing from the Industry shall include a requirement to only source from companies which hold a valid Certificate of Compliance from the bargaining council.

(8) Compliance Promotion

- 8.1 All current non-compliant companies which meet a minimum of 80% of the party-to-party *negotiated wage rate* for current employees, shall be regarded as level B compliant, subject to sub-clause 8.2 below.
- 8.2 All companies described in 8.1 above shall achieve 100% wage compliance within a period of 18 months from 1 September 2012, in 6 monthly equal increments, failing which full compliance enforcement including the execution of writs shall apply to them.
- 8.3 The arrears of non-compliant companies shall be ring-fenced in a 'suspense account' at 100% of the verified arrears value and a written time-bound repayment plan agreed with the bargaining council. They should also sign a legally enforceable acknowledgement of debt.
- 8.4 The current policy that allows for a maximum of 6-months as a repayment period for arrears shall be amended, to allow for a maximum eighteen (18) months repayment period with effect from 1 November 2012.
- 8.5 The arrears will become payable in full should the employer become non-compliant, or default on the repayment plan at any time in future, unless otherwise agreed by the parties.
- 8.6 At every future meeting of the National Bargaining Council, each party shall make one practical concrete suggestion on how to further promote compliance in the industry.
- 8.7 The National Bargaining Council General Secretary shall have unfettered authority to serve any writ of execution upon any employer who fails to become compliant in terms of the new compliance provisions envisaged in this agreement, unless the parties agree otherwise.
- 8.8 Nothing in this agreement shall have the effect of downward migration of conditions of employment for any current employee.
- 8.9 The Trade Union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of this agreement."

39. ATYPICAL WORK AND SUBCONTRACTING

- (1) The same terms and conditions of employment applicable to a permanent employee shall apply to a contract worker in that job grade, unless otherwise specified in this part of the Agreement.
- (2) The Council shall conduct a biannual survey amongst employers to analyse trends relating to contract work, outsourcing, subcontracting and the use of homeworkers.
- (3)
 - (a) The Council shall conduct a survey on the extent and type of contract work in the clothing industry.
 - (b) Every employer shall complete a questionnaire as approved by the Council.
 - (c) All employers are required to co-operate with the survey.

40. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2013: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 September 2012.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in subclause (2) above shall mean negotiations as contemplated in subclause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

41. PRODUCTIVITY

The Productivity Scheme which was agreed to is:

Contained in Annexure B.

- (1) The bargaining council shall establish a dedicated productivity unit to promote productivity issues in the industry, as part of the NBC's value-added services.
- (2) The bargaining council shall commission a feasibility study for the establishment of a training institute similar to the previous Clothing Industry Training Board (CITB), to be operated under the auspices of the bargaining council as part of the NBC's value-added services.
- (3) Absenteeism
 - (i) The memorandum of Understanding as concluded between the parties on 14 June 2007 and implemented shall remain in effect for the duration of the Agreement only.
 - (ii) Where companies have introduced the productivity scheme as per the provisions of the absenteeism MOU, such schemes are extended for the duration of this agreement, subject to plant level agreements entered into and signed off.

42. AGENCY SHOP

Those employees, who are not bound by the closed shop, shall pay an agency fee to the trade union, equal to the amount of the union subscriptions.

- (1) No union agency fee subscriptions collected in terms of this agreement may be:
 - (a) paid to a political party as an affiliation fee;

C - 62

- (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
- (c) used for any expenditure that does not advance collective bargaining or protect the socio-economic interest of employees.

This agency fee shall be deducted from the wages of the employees who are not members of SACTWU and paid over to the Bargaining Council's KZN Chamber who shall pay these funds over to SACTWU.

43. INDUSTRY PROTECTION FUND

Contained in Annexure C.

44. HIV/AIDS

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment as set out in Annexure A to this agreement shall be policy in the industry.

World International HIV/AIDS Day

The industry acknowledges the importance of creating awareness of the HIV/AIDS pandemic. To this end, employers are encouraged to grant employees on World International HIV/AIDS Day thirty minutes paid time off to participate in awareness activities agreed to at industry level.

45. CONTRACT EMPLOYEES

Contained in Annexure D.

46. WORKING IN ARRANGEMENTS

Employees shall be permitted to work in the time lost due to strike action incurred during the September / October 2009 protected wage strike at normal rates of pay, provided that this is agreed to at plant level and further provided that where agreed, such employees shall be offered a loan equal to between one week and two weeks' wages, deductible from their wages in equal weekly amounts over a 10 week period.

ANNEXURE A**CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS
AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING
INDUSTRY OF SOUTH AFRICA****1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:
 - eliminating unfair discrimination in the workplace based on HIV status;
 - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
 - promoting appropriate and effective ways of managing HIV in the workplace;
 - creating a balance between the rights and responsibilities of all parties.

2. OBJECTIVES

- 2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
 - (i) creating a non-discriminatory work environment;
 - (ii) dealing with HIV testing, confidentiality and disclosure;
 - (iii) providing equitable employee benefits;

- (iv) dealing with dismissals; and
- (v) managing grievance procedures.

2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:

- (i) creating a safe working environment for all employers and employees;
- (ii) developing procedures to manage occupational incidents and claims for compensation;
- (iii) introducing measures to prevent the spread of HIV;
- (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
- (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.

2.3. In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:

- (i) between employers, employees and the trade union in the workplace; and
- (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

3. POLICY PRINCIPLES

- 3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5. Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

4. APPLICATION AND SCOPE

- 4.1. All employers and employees within the clothing manufacturing industry, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this code, the term "workplace" should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.

- 4.3. This Code, however, does not impose any legal obligation in addition to those in the Employment Equity Act, the Labour Relations Act and this code, or in any other legislation referred to in the Code.
- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

5. LEGAL FRAMEWORK

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:

- (i) Employment Equity Act, No. 55 of 1998;
- (ii) Labour Relations Act, No. 66 of 1995;
- (iii) Occupational Health and Safety Act, No. 85 of 1993;
- (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
- (v) Basic Conditions of Employment Act, No. 75 of 1997; and
- (vi) Medical Schemes Act, No. 131 of 1998.
- (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.

- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.

- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.

5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.

5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.

5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.

5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).

5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.

- 5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.
- 5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].
- 5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT

- 6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:
- (i) recruitment procedures, advertising and selection criteria;
 - (ii) appointments, and the appointment process, including job placement;
 - (iii) job classification or grading;
 - (iv) remuneration, employment benefits and terms and conditions of employment;
 - (v) employee assistance programmes;
 - (vi) job assignments;
 - (ix) training and development;
 - (x) performance evaluation systems;
 - (xi) promotion, transfer and demotion;
 - (xiii) termination of services.
- 6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:
- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
 - (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
 - (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
 - (iv) providing support for all employees infected or affected by HIV and AIDS; and
 - (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE

7.1. HIV Testing

7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

7.1.2. Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts. ^{1[1]}

7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out in item

7.1.4. Authorised testing

Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:

- (i) during an application for employment;
- (ii) as a condition of employment;
- (iii) during procedures related to termination of employment;
- (iv) as an eligibility requirement for training or staff development programmes; and
- (v) as an access requirement to obtain employee benefits.

7.1.5. Permissible testing

(a) An employer may provide testing to an employee who has requested a test in the following circumstances:

- (i) As part of a health care service provided in the workplace;
- (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
- (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.

(b) Furthermore, such testing may only take place within the following defined conditions:

- (i) At the initiative of an employee;
- (ii) Within a health care worker and employee-patient relationship;
- (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and

^{1[1]} The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the National Bargaining Council for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

- (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.

- 7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.
- 7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.
- 7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.^{2[2]} Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

7.2. Confidentiality and Disclosure

- 7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.
- 7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.
- 7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:
 - (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
 - (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
 - (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

8. PROMOTING A SAFE WORKPLACE

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:

^{2[2]} See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

- (i) the risk, if any, of occupational transmission within the particular workplace;
- (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
- (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
- (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
- (v) the procedures to be followed in applying for compensation for occupational infection;
- (vi) the reporting of all occupational accidents; and
- (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
- (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.

- 9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

10. EMPLOYEE BENEFITS

- 10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits
- 10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

11. DISMISSAL

- 11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.

11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.

11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

12. GRIEVANCE PROCEDURES

12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.

12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.

12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

13. MANAGEMENT OF HIV IN THE WORKPLACE

13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:

13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace;
and

13.1.2. Long and short term measures to deal with and reduce this impact, including:

- (i) An HIV/AIDS Policy for the workplace
- (ii) HIV/AIDS Programmes, which would incorporate:
 - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
 - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
 - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE

14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.

14.2. Broadly, impact assessments should include:

- (i) Risk profiles; and
- (ii) Assessment of the direct and indirect costs of HIV/AIDS;

- 14.3. Risk profiles may include an assessment of the following:
- (i) The vulnerability of individual employees or categories of employees to HIV infection;
 - (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
 - (iii) A profile of the communities from which the organisation draws its employees;
 - (iv) A profile of the communities surrounding the organisation's place of operation; and
 - (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.
- 14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:
- (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
 - (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;
- 14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE

15.1. A Workplace HIV/AIDS Policy

15.1.1. Every workplace should develop an HIV/AIDS policy^{3[3]}, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;
 - (ii) an outline of the HIV/AIDS programme;
 - (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);
 - (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
 - (v) grievance procedures in line with item 12 of this Code;
 - (vi) set out the means of communication within the organisation on HIV/AIDS issues;
 - (vii) details of employee assistance available to persons affected by HIV/AIDS;
 - (viii) details of implementation and coordination responsibilities; and
 - (ix) monitoring and evaluation mechanisms.
- 15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including the trade union, employee representatives, occupational health staff and the human resources department.
- 15.1.3. The policy should reflect the nature and needs of the particular workplace.
- 15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:

^{3[3]} This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

- (i) communicated to all concerned;
- (ii) routinely reviewed in light of epidemiological and scientific information; and
- (iii) monitored for its successful implementation and evaluated for its effectiveness.

15.2. Developing Workplace HIV/AIDS Programmes

15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:

- (i) hold regular HIV/AIDS awareness programmes;
- (ii) encourage voluntary testing;
- (iii) conduct education and training on HIV/AIDS;
- (iv) promote condom distribution and use;
- (v) encourage health seeking behaviour for STD's;
- (vi) enforce the use of universal infection control measures;
- (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
- (viii) endeavour to establish a wellness programme for employees affected by HIV/AIDS;
- (ix) provide access to counselling and other forms of social support for people affected by HIV/AIDS;
- (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
- (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4
- (xii) regularly monitor, evaluate and review the programme.

15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

16. INFORMATION AND EDUCATION

- 16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.
- 16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.

GLOSSARY

<i>Affected employee</i>	an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive
<i>AIDS</i>	AIDS is the acronym for "acquired immune deficiency syndrome". AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
<i>Epidemiological</i>	The study of disease patterns, causes, distribution and mechanisms of control in society.
<i>HIV</i>	HIV is the acronym for "human immuno deficiency virus". HIV is a virus which attacks and may ultimately destroy the body's natural immune system.
<i>HIV testing</i>	taking a medical test to determine a person's HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of 'risk behaviour' (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee's or job applicant's HIV status.
<i>HIV positive</i>	having tested positive for HIV infection.
<i>Infected employee</i>	an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
<i>Informed consent</i>	a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
<i>Policy</i>	a document setting out an organisation's position on a particular issue.
<i>Pre and post test counselling</i>	a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
<i>Reasonable Accommodation</i>	means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
<i>STDs</i>	acronym for "sexually transmitted diseases". These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.
<i>Surveillance Testing</i>	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

C - 74

ANNEXURE B**PRODUCTIVITY**

The following provisions shall be applicable to the plant level productivity incentive schemes:

- (1) Employers shall pay an amount of 0.5% of the weekly wage into a dedicated productivity incentive bank account. This must be done on a weekly basis or on the date that wages is normally paid, if it is paid at a time other than weekly.
- (2) The money in this productivity incentive bank account is ringfenced for the introduction of plant level productivity incentive schemes only.
- (3) This productivity incentive scheme bank account shall be opened and authorised on the basis of co-signatures, as follows: a person nominated by management plus a SACTWU shop steward (where there are no shop stewards at a workplace, a representative nominated by the workers shall be the second signatory).
- (4) With effect from 1 September 2008, each workplace shall have a period of 2 months within which they must reach agreement between management and the union about how the productivity incentive scheme at that workplace will function and how the incentives are to be paid.
- (5) If there is no productivity incentive scheme agreement reached by 1 November 2008, all the monies in the productivity bank account must be paid out to the workers as part of their wages, until an agreement on an appropriate productivity incentive scheme is reached.
- (6) The productivity incentive scheme agreements reached must ensure that all workers covered by the terms of this agreement, not just some, shall benefit from the incentive scheme.
- (7) All productivity scheme agreements reached must be registered with the National Bargaining Council for the Clothing Manufacturing Industry, within 1 month after agreement has been reached.
- (8) Productivity incentive scheme agreements shall not contain any provisions, which have the effect of downward variation of any term or condition of employment.
- (9) The productivity incentive scheme envisaged in this agreement shall be in addition to and not in place of any existing productivity incentive scheme, which may currently exist.
- (10) If the workplace closes or is liquidated, all the money left in the productivity incentive bank account must be paid out to the employees at that workplace and who are covered by the terms of this agreement.

ANNEXURE C**INDUSTRY PROTECTION FUND**

- (1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Bargaining Council, where such programmes are aimed at protecting the Industry in the respective Region.
- (3) The Fund shall commence on such date as decided by the parties to the Regional Council and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 10 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4) above, contribute an amount of 14 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the payment date specified in the relevant part of the Agreement and in the form and manner specified in relevant clause of each part of the Agreement.
- (7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber of the Bargaining Council for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.
- (8) The moneys collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in sub-clause (2), and including
 - (a) "Buy Local" campaigns;
 - (b) Combating customs fraud and illegal imports; or
 - (c) for such other strategies as meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Regional Employers' Associations who are members of the Bargaining Council become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in sub-clause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber.

C - 76

- (10) The Fund's moneys shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the Regional Employers' Association is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the Regional Employers' Association, as the case may be, may request confirmation in advance from the Regional Chamber in this regard.
- (12) No moneys of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the Regional Employers' Association and the Regional Chamber have signed a written agreement.
- (13) Any interest that is earned on Fund moneys at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the Regional Employers' Association shall, as the need arises, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan shall be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the parties shall be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he or she is satisfied that the expenditure-
- (a) is in terms of the approved plan;
 - (b) is clearly classified by strategy, activity and the nature of the expense; and
 - (c) has been authorised by the Regional Secretary or National Secretary of SACTWU, or the Executive Director of the Regional Employers' Association.
- Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure shall be presented to the Regional Chamber for approval prior to payment.
- (16) Any expenses that have been incurred by SACTWU or the Regional Employers' Association for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the Regional Employers' Association, may be recovered by the Regional Chamber from SACTWU or the Regional Employers' Association, as the case may be.
- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to the Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the Regional Employers' Association shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund and for which funds have been disbursed.
- (19) In the event that there is a disagreement between the parties as to whether any activity or expenditure or proposed activity or expenditure falls within the objects of the Fund, either

C - 77

party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.

- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

ANNEXURE D**CONTRACT EMPLOYEES**

- (1) Those contract employees with 12 months' or more employment with the same employer shall be converted into permanent employees.
- (2) All contract employees shall be entitled to receive a pro-rata share of all statutory payments due to permanent employees.
- (3) All contract employees who are in employ as at the end of November each year shall be entitled to full payment for all public holidays which fall during the annual shutdown period.
- (4) Employees who have completed a learnership shall not be placed on a further contract period after the completion of such a learnership, but shall be employed as a permanent fulltime employee.
- (5) Where there are more beneficial arrangements (other than those set out in sub-clauses (1) to (4) above) governing the employment of contract workers, such provisions shall remain effective.

PART D:

CONSOLIDATED

AGREEMENT

FOR THE

NORTHERN

REGION

(CLOTHING)

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY**NATIONAL MAIN COLLECTIVE AGREEMENT**

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

Cape Clothing Association

Coastal Clothing Manufacturers' Association

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

¹*South African Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' 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 National Bargaining Council for the
Clothing Manufacturing Industry.

¹ *This Employer association has not signed the 2013/2014 Party-to-Party Agreement, however, remains an Employer Party to the Bargaining Council and, hence, is reflected on this page.

1. SCOPE OF APPLICATION

The terms of this Agreement shall be observed in the Clothing Manufacturing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

Part A Provisions for the Eastern Cape Region

Part B Provisions for the Free State and Northern Cape Region

Part C Provisions for the KwaZulu-Natal Region

Part D Provisions for the Northern Region (Clothing)

Part E Provisions for the Northern Region (Knitting)

Part F Provisions for the Western Cape Region (Clothing)

Part G Provisions for the Western Cape Region (Country Areas)

Part H Provisions for the Western Cape Region (Knitting)

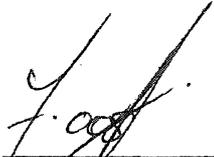
Part I Provisions for the Non-Metro Areas

by the employers and employees in the Clothing Industry who are members of the employers' organisations and the trade union, respectively.

2. PERIOD OF OPERATION OF THIS AGREEMENT

- (1) This agreement is binding on the parties hereto from 1 September 2013 until 31 August 2017 unless the parties agree otherwise in writing.
- (2) The parties record that they intend to request the Minister of Labour to extend this agreement to non-parties in the Clothing Industry in terms of section 32 of the Labour Relations Act 66 of 1995. The period of operation of this agreement in respect of non-parties will be determined by the Minister.

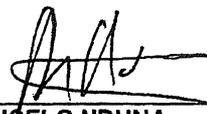
Original Agreement signed at CAPE TOWN on behalf of the Parties the 24TH day of FEBRUARY 2014.



FREDA OOSTHUYSEN
Chairperson



MARTHIE RAPHAEL
Vice-Chairperson



SICELO NDUNA
General Secretary

PART D : PROVISIONS FOR THE NORTHERN REGION (CLOTHING)**1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed-
- (a) by all employers who are members of the employers' organisation and who are engaged in the Clothing Industry, and by all employees who are members of the trade union and who are employed in the Industry;
- (b) in the Province of the Transvaal, as it existed prior to the coming into operation of the constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).
- (2) Clauses 1 (1) (a), 2, 22(5), 25(1) and 26A(1) to (3) of this Collective Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union respectively.
- (3) The Table of Contents of this Part A of the Main Collective Agreement is as follows:

CLAUSE NO.	DESCRIPTION
1.	SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT.....
2.	PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT
3.	DEFINITIONS
4.	WAGES
5.	INCENTIVE BONUS SCHEME.....
6.	SHORT-TIME
7.	PAYMENT OF AMOUNT DUE TO EMPLOYEES
8.	PROPORTION OR RATIO OF EMPLOYEES
9.	HOURS OF WORK.....
10.	OVERTIME AND SUNDAY WORK
11.	OUTWORK.....
12.	REGISTRATION OF AN EMPLOYER.....
13.	PAID HOLIDAYS AND ANNUAL LEAVE.....
14.	TERMINATION OF EMPLOYMENT
15.	PREMIUMS
16.	TOOLS
17.	CONTRACTS.....
18.	ENGAGEMENT, TRANSFER AND TERMINATION FORMS
19.	EXEMPTIONS.....
20.	COUNCIL FUNDS
21.	MEDICAL BENEFIT SOCIETY
22.	EXTRACT FROM WAGE REGISTERS
23.	TRADE UNION LABOUR.....
24.	POWERS OF DESIGNATED AGENTS.....
25.	PROHIBITION OF EMPLOYMENT OF CHILDREN AND OF FORCED LABOUR.....

26.	EXHIBITION OF AGREEMENT
27.	OVERALLS
28.	SAFEGUARD OF WORKERS' EARNINGS
29.	PROVIDENT FUND
30.	ADMINISTRATION AND INTERPRETATION OF AGREEMENT
31.	SEVERANCE PAY
32.	MATERNITY BENEFITS
33.	PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT
34.	DISPUTE PROCEDURE
35.	INDUSTRY PROTECTION FUND (Annexure C)
36.	FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION
37.	ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING
38.	PRODUCTIVITY (Annexure B)
39.	HIV/AIDS (Annexure A)
40.	CONTRACT EMPLOYEES (Annexure D)
41.	WORKING IN ARRANGEMENTS

2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

3. DEFINITIONS

General definitions

Any expressions used in this part of the Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendments of such Act, 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;

"agency shop" means the compulsory payment of a monthly levy by the non-party employers;

"blocker" means an employee engaged in one or more of the following operations in a Millinery Sector establishment:

Blocking, panning, stiffening of raw materials, pressing, spraying and polishing of hats, dyeing and brushing of hats in the course of manufacture;

"blocker's assistant" means an employee who assists the blocker in a Millinery Sector establishment by standing in front of the blocker and keeping the hats in place on the block;

"Category A" means a pattern maker and/or grader;

"Category B" means a marker-in;

"Category C" means a mechanic;

"Category D" means a chopper-out, cutter and/or re-cutter, negative maker, screen maker (engraver), screen printer and sample cutter;

"Category E1" means a sample machinist;

"Category E" means a sewing machinist, a finisher, an operator of a linking, overlocking and/or sewing machine, an invisible mender, an embroiderer, an embroidery machinist (other than embroidery machine mincer), a faggotter, a beader and/or pleater by hand, a baster, a shaper, a fitter-up, a checker, a presser of garments, an assistant screen maker (engraver), an assistant screen printer, a darkroom assistant, a mixing and filtering operator, an oven and curing operator, a screen controller, a screen preparer, a squeegee preparer, and a despatch packer;

"Category F1" means a machinist promoted to assistant supervisor;

"Category F" means an assistant supervisor, other than a machinist promoted to assistant supervisor, a despatch clerk, factory clerk and a storeman;

"Category G1" means other pressers not provided for elsewhere in this clause, an underpresser, a presser of shirts, ties, pyjamas and other nightwear, hats, caps, underwear, knitwear, aprons, overalls and blouses without lace, embroidery, tucks and handmade pleats, a machine belt fixer, a maintenance assistant, a layer-up; a plain sewer, an operator of a button covering, zip tacking and/or pleating machine, an employee engaged on the trubenizing of collars and/or a clicker and shaper by template, a general worker, an applique cutter, a tracer and/or marker and/or framer, a pleater, and an embroidery machine mincer;

"Category G2" means all employees classified as G1, who are qualified as at 31 December 1987, other than a general worker, an applique cutter, a tracer and/or marker and/or framer;

"Category H1" means a foreman;

"Category H2" means a supervisor, an assistant foreman and a head cutter;

"Category H3" means an artisan;

"Category H4" means a labourer, scooter driver and/or boiler attendant;

"Category H5" means a watchman;

"Category H6" means a driver of a light motor vehicle;

"Category H7" means a driver of a medium motor vehicle;

"chopper out" means an employee engaged in the cutting out of material, other than trimming by hand or machine, in a Millinery Sector establishment;

"Clothing Industry" or "industry" means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear; nightwear (including pyjamas), outerwear, protective wear including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties) and underwear.

A. and includes -

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;

D - 5

- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of buttonholes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is (are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

B. but excludes -

- (a) belts, braces, garters, suspenders and armllets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

"complying employer" means an employer which is registered with the Council and which has registered all permanent and contract employees with the Council, and which has given effect to all collective agreements of the Council which are applicable to it in each of its establishments, or which has received exemption from any collective agreement to the extent of such exemption;

"Council" means the Northern Chamber (Clothing) of the National Bargaining Council for the Clothing Manufacturing Industry;

"employee" means those employees falling within the jurisdiction of the scope of the Council;

"employer" means any person who employs or provides work for any person within the Industry.

"experience" means the total period or periods of employment of an employee in the Clothing Industry and/or Bespoke Tailoring Industry and/or private dressmaking, excluding the Millinery Sector, in any capacity or capacities in respect of which wages are prescribed in clause 4 of this part of the Agreement, and shall be deemed to each contract of service to have been continuous from the time the employee enters this employer's service until the time such service is terminated: Provided that-

- (a) for the purpose of computing an employee's experience in the Clothing Sector, employment for 16 weeks in any half year shall be deemed to have been employment for the whole half-year;
- (b) a trainee in his first half-year of employment in the Clothing Sector, although having less than 16 weeks' but more than 13 weeks' experience on the last day of a half-year shall be deemed to have been in employment for the whole half-year;
- (c) experience in the Knitting Sector shall be regarded as experience in the Clothing Sector but not in the Millinery Sector;
- (d) the trial period of an employee in terms of 13 (1) (b) (iii) shall be deemed to be experience only if the contract of service is confirmed;
- (e) for the purposes of the Millinery Sector of the Industry only, the total period of periods of employment of an employee in the Millinery Sector, irrespective of the place of such employment or the class of work performed by such employee, other than that of a labourer or driver of a motor vehicle, shall include the total period or periods of employment in a shop of a Millinery Sector employer mainly or wholly engaged in the alteration and/or repair of ladies' and/or girls' hats, incidental to the sale by retail of such articles; and shall be deemed in each contract of service to have been continuous from the time the employee enters his employer's service until the time that such service is terminated: Provided that for the purposes of computing an unqualified employee's experience, employment of 16 weeks in any half-year shall be deemed to have been in employment for the whole half-year on condition that an unqualified employee in his first half-year of employment, although having less than 16 weeks' experience on the last day of the half-year, but more than 13 weeks, shall be deemed to have been in employment for the whole half-year;

"half-year" means the six-monthly period commencing on the first day of January or July;

"hourly wage" means, in the case of an employee, the weekly wage, divided by the number of ordinary hours of work per week prescribed for an employee of his class;

"level B compliance" refers to the status of non-compliant employers who bring themselves within the provisions of clause 22(8). For so long as such employers abide by all the conditions set out therein, no writs of execution in respect of non-compliance will be enforced against them, and they will be entitled to Level B Compliance Certificates from the Council;

"medical practitioner" means a person entitled to practice as a medical practitioner in terms of the Medical Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

"milliner" means an employee who has had two or more years' experience in one or more of the following operations in a Millinery Sector establishment:

- (a) the design of hats;

D - 7

- (b) the making of complete hats with material, excluding the making up of hats from material by machine;
- (c) the setting out and/or chopping out of patterns, excluding the cutting of trimmings;

"National Council" means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of the Act;

"nightwork" means work performed after 18:00 and before 06:00 the next day;

"normal shift worker" means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

"old age" means 60 years of age;

"operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer;

"ordinary hours of work" means a 40-hour week of five days and 60 hours in any one week in respect of a watchman in the Clothing Sector and a 41-hour week of five days and 45 hours in any one week in respect of a watchman in the Millinery Sector;

"overtime" means the time that an employee works during a day or a week in excess of ordinary hours of work;

"permanent disability", as certified by a medical practitioner, means being permanently unfit for further employment in the Clothing Industry;

"personal wage" means the last wage paid by the employer which is higher than the prescribed wage and which is checked by the Council, in terms of clause 18 of the Agreement, plus any statutory increases prescribed in terms of this part of the Agreement since date of termination of employment: Provided that not more than the four most recent increases shall be taken into account in determining the personal wage: Provided further that where an employee has not been employed in the Industry for more than two years, the personal wage shall be the greater of the minimum currently prescribed and the last wage paid on termination of employment;

"qualified employee" in the case of an employee referred to in clause 4 (1) Categories A and B in the Schedule to clause 4 (1), means an employee who has two (2) years and ten (10) months or more experience; and in the case of clause 4 (1) Category C, an employee who has four (4) years and four (4) months or more experience, and in the case of clause 4 (1) Categories D and E, an employee who has one (1) year and ten (10) months or more experience;

"short time" means a temporary reduction in the number of working hours of any employee in any one week below the number of hours prescribed for an employee of his class or temporary cessation of work by reason of the exigencies of the business, e.g. shortage of material or orders or the necessities of stocktaking;

"task work" means the setting by an employer or his representative to any employee of a definite number of garments or portions of garments, to be made by such employee in a specified time;

"trade union representative" means a member of a trade union who is elected to represent employees in a workplace;

"trainee" in the case of an employee referred to in clause 4 (1) Categories A and B, means an employee who has less than two (2) years and ten (10) months experience; and in the case of an employee referred to in clause 4 (1) Category C, means an employee who has less than four (4) years and four (4) months experience; and in the case of an employee referred to in clause 4 (1) Categories D and E, an employee who has less than one (1) year and ten (10) months experience;

"trimmer" or "stitcher" means an employee engaged in one or more of the following operations in a Millinery Sector Establishment:

- (a) the application of trimmings such as elastic, ribbon, flowers or veiling to a ready blocked

- and shaped hat, according to a given model, by hand;
- (b) sewing by hand into hats of headbands, lining or leather, which may include as part of the same operation the stitching by hand of blocked crowns and brims which have been fused or pinned together;
 - (c) making trimmings by hand according to a given design or pattern;
 - (d) the wiring of brim or crown of hats by hand;
 - (e) binding any edge of a hat with ribbon or other material, by hand;
 - (f) cutting by hand of felt and straw strips for hat edges and trimmings;

"twilight shift" means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

"twilight shift worker" means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

"unladen mass" means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue licences in respect of motor vehicles;

"wage" means the portion of the remuneration, excluding the bonus earned in terms of clause 5 of this part of the Agreement, payable to an employee in respect of the ordinary hours of work as laid down in clause 9 of this part of the Agreement;

"week" means a period of five working days;

"working day" means any day on which work is usually performed in the Industry;

"workplace" means the place or places where the employees of an employer work; if an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where employees work in connection with each independent operation constitutes the workplace for that operation;

"occupations" means the jobs listed and described as follows:

"applique cutter" means an employee who cuts off the loose edges of pieces of material which have been embroidered onto garments or parts of garments;

"artisan" means an employee who is engaged in work normally performed by a skilled artisan, other than minor repairs or adjustments to machinery or installations or minor repairs or renovations to buildings, and other than a machine belt fixer and maintenance assistant referred to in clause 4 (1) Category G1 of this part of the Agreement, and for the purposes of this definition the expression "skilled artisan" means a person who has completed or is deemed to have completed a contract of apprenticeship in a trade designated or deemed to have been designated in terms of the Manpower Training Act, 1981, or who holds a certificate issued or deemed to have been issued to him by the Registrar of Manpower Training and conferring on him artisan status in terms of that Act and any other employee engaged in work normally performed by an artisan except where specifically otherwise provided;

"assistant foreman" means an employee who assists a foreman in the performance of his duties;

"assistant supervisor" means an employee who assists a supervisor in the performance of his duties;

"bartacker" means an employee engaged in sewing the edges of garments by using a sewing machine;

"baster" means an employee engaged in hand-sewing in setting a coat or parts of a coat into position preparatory to other operations, and/or in underbasting, i.e. hand-sewing linings of coats into position preparatory to sewing the edge seams, and includes an employee

D - 9

engaged on outbasting and a person operating a programmed automatic machine that joins or holds two parts of a garment together;

"beader" means an employee who sews beads onto garments or part of garments by hand;"

"boiler attendant" means an employee who, under general supervision, maintains the water level and steam pressure in a boiler and who makes, maintains or draws the fire in such a boiler and who removes ashes;

"checker" means an employee who examines the incompleted and/or completed garments for flaws;

"clicker" means an employee who cuts parts of garments from dies, using a mechanical or hydraulic press;

"chopper out" means an employee engaged in cutting out garments or parts of garments by hand from one or more layers of material;

"cutter" means an employee who, with the aid of a single pattern, cuts by hand or machine parts of knitted garments from one or more layers of body blanks;

"despatch clerk" means an employee who is responsible for the despatch or the packing of goods for transport or delivery and who may supervise the assembling, checking, mass-measuring, packing, marking, addressing or despatching of such goods or packages;

"despatch packer" means an employee who is wholly or mainly engaged in the making up of orders and/or parcels and/or bales in readiness for despatch;

"driver of a light vehicle" means an employee who has a light motor vehicle licence (previously referred to as 'Code 8') and drives a vehicle with a gross vehicle mass of less than 2 000 kg;

"driver of a medium motor vehicle" means an employee who has a medium motor vehicle licence (previously referred to as 'Code 10') and drives a vehicle with a gross mass of more than 2 000 kg;

"embroiderer" means an employee who operates a single-head machine; makes a predetermined logo by means of tracing and a frame, operates an embroidery machine, and threads up, adjusts tension, checks and/or examines work under needles, excluding a multihead machine operator;

"embroiderer by hand" means an employee who embroiders by hand using a needle and thread;

"embroidery machine operator" means an employee who operates a multi-head machine or machines;

"factory clerk" means an employee who is employed in the production area of the factory and who is wholly or mainly employed in the recording of attendance and/or production data, which data may require further processing by office administration;

"finisher" means an employee who performs one or more of the following operations by hand: Putting pads or wadding into shoulders of coats, fastening or serging sleeveheads, wadding sleeveheads, felling silk facings already basted into position, making buttonholes by hand, and felling sleevehead linings by hand;

"fitter-up" means an employee engaged in the cutting room who takes the outsides of garments together with the cut-out linings (called trimmings) and adjusts the outsides and the insides together accurately so that the parts may go forward to the machine to be put together correctly;

"foreman" means an employee in charge of the employees in a factory, who exercises control over such employees and who is charged with the responsibility for engaging or terminating the employment of such employees and who is responsible for the efficient performance by them of their duties;

"framer" means an employee who inserts a piece of cloth or part of a garment into a frame preparatory to the embroidering thereof;

“general worker (Clothing)” means an employee engaged in one or more of the following operations in the Clothing Sector of the Industry:

Cleaning, i.e. cutting or nipping off threads by machine or hand and/or removing spots or marks from materials or garments, folding, sorting, pinning finished garments, stamping, marking, sloping by hand or machine, patent turning, cutting by hand or any trimming (not being piece goods) to a given length or shape, feeding into or taking out of automatic roller or form presses, pulling out bastings, soaping, turning sleeves or trousers inside out, marking by template and cutting to shape, excluding the operations performed by a "sharper by template", marking trimmings, labelling by machine other than a machine using needle and thread, making tea or similar beverages, or carrying garments or parts of garments from one place to another within an establishment, acting as messenger, and sweeping floors;

“general worker (Millinery)” means an employee engaged in one or more of the following operations in the Millinery Sector of the Industry:

- (a) laying up;
- (b) moulding of flowers;
- (c) cutting off surplus of brims along marked lines;
- (d) collecting and sorting hats;
- (e) fixing belts;
- (f) sheening and/or polishing and mangling hoods;
- (g) steaming of dusting hats;
- (h) straightening out the remnants;
- (i) stirring or grinding chemicals;
- (j) grinding shellac;
- (k) packing;
- (l) delivering or carrying messages, letters or other articles on foot, by means of a bicycle or a similar foot-propelled vehicle;
- (m) making tea or other similar beverages;
- (n) cleaning premises, utensils or other articles;
- (o) loading or unloading vehicles;
- (p) carrying, moving, stacking or sorting goods or waste;
- (q) making or maintaining fires;
- (r) opening or closing packages;

"head cutter" means an employee who is responsible for the efficient performance of duties by other cutters;

"invisible mender" means an employee who is engaged in repairing knitting faults in garments or parts of garments;

"labourer" means an employee engaged in one or more of the following operations: Cleaning premises, loading or unloading goods, carrying and/or stacking goods, removing refuse;

"layer-up" means an employee who is engaged in the laying of material in one or more thickness on the cutting tables and may include the duty of slitting the ends;

"linker" means an employee engaged in operating a linking machine used for the purpose of joining parts of a fully fashioned garment;

"machine belt fixer" means an employee who measures a leather belt and by means of a pair of pliers fits a belt to a sewing machine;

D -11

"maintenance assistant" means an employee who is engaged in oiling, greasing and cleaning sewing machines, and who may make adjustments or replace parts to sewing machines or other equipment used directly in the manufacture of the products of the workplace, such as chain hooks, bases, feed dogs, throat plates, tension controls, tension springs, presser feet, lifters, shuttles on bar-tack and button sew-on machines, and loopers on machines, and/or is engaged in cleaning plant, machines, vehicles, tools, utensils or articles other than garments;

"marker-in" means an employee who is engaged on marking-in patterns on cloth or any material, and includes an employee who makes the prototype markers;

"mechanic" means an employee (other than an artisan, machine belt fixer and/or maintenance assistant) who is wholly or mainly engaged in making repairs or adjustments to machinery or equipment used directly in the manufacture of the products of the workplace;

"overlocker" means an employee operating a sewing machine with one or more needles and thread which serges the edge of fabrics;

"pattern grader" means an employee who grades patterns to various sizes and makes ancillary patterns to a master pattern;

"pattern maker" means an employee engaged in designing and making patterns, but excludes a designer who makes only master patterns;

"plain sewer" means an employee performing one or more of the following operations by hand:

Felling crutch linings in trousers, felling hems, fastening permanent turn-ups, felling waistband linings or parts thereof, fastening catches in tops of trousers and various odds and ends of sewing, felling necks, shoulders or armholes of wastecoats, paddling collars or lapels, putting on bridles, fastening edgestrays and odds and ends of sewing, sewing buttons, felling hems of linings or seams of same already basted into position, felling bindings, making and sewing on hangers, canvases, and tacking, and all hand-sewing not elsewhere specified;

"pleater" means an employee engaged in one or more of the following operations:

Guiding material and paper through an automatic pleating machine, putting material between cardboard moulds and/or preparing for steam box in hand or mould-pleating process, taking materials out of moulds in hand or mould pleating process;

"presser of garments" means an employee who operates a pressing machine and presses a finished garment;

"re-cutter" means an employee who is engaged in cutting out and/or marking-in materials for replacing damaged or missing parts of a garment;

"sample machinist" means an employee who completely machines prototype garments, other than patent machining;

"scooter driver" means a driver of a three or two-wheeled motor vehicle used for the delivery of goods;

"sample cutter" means an employee engaged in marking-in and cutting out garment samples or parts thereof, where the conventional marking-in skill is not required;

"sewing machinist" means an employee engaged on operating a sewing machine using a needle and thread;

"shaper" means an employee engaged on shaping by hand designs of lapels and collars of coats preparatory to underbasting, but does not include trimming by hand;

"shaper by template" means an employee, other than a shaper, engaged on marking by template and cutting to shape of collars, lapels and/or fronts of ladies', men's and children's jackets and/or coats;

"storeman" means an employee who is in general charge of stores and/or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or

warehouse and/or delivering goods from a store or warehouse to the consuming departments in a workplace or for despatch;

"supervisor (Clothing)" means an employee in a Clothing Sector establishment who, under supervision, is responsible for the efficient performance of the duties of the employees or a section of the employees in a workshop, but does not include an assistant supervisor;

"supervisor (Millinery)" means an employee in a Millinery Sector establishment, who is in charge of employees engaged on production in a workplace and who is responsible for the distribution and efficiency of their work;

"tracer and/or marker" means an employee who, with powdered chalk or other similar material, marks or traces the outlines of a pattern onto the material with the aid of a perforated lay marker;

"under-presser" means an employee who is engaged in pressing seams, linings, unfinished parts of garments and/or unfinished garments, or who may be engaged in any pressing operations incidental to further machining operations;

"watchman" means an employee engaged in guarding property and/or patrolling premises;

"operations" means all clothing manufacturing operations including those defined below:

"beading" means the application by means of needle and thread of beads, sequins or other similar articles to a garment for the ornamentation of such garment;

"faggotting" means the joining of two pieces of cloth side by side by means of ornamental stitches;

"felling" means the operation of folding one end of the fabric over the other and sewing it down in such a manner that the stitching does not appear on the other side;

"marking" means the marking of the position of pockets, buttons, buttonholes, loops, fasteners, darts, hems, turn-ups and the like, preparatory to further operations;

"patent fuming" means turning out or over the edges of collar facings, belts, bands, cuffs, tabs, pockets and/or flaps by hand or machine and turning garments or parts thereof inside out;

"pleating" means the insertion of pleats or permanent folds into the cut-out parts of the skirt portion of a dress;

"sloping" means the marking and/or trimming of the shapes of the necks of shirts and underwear;

"sorting" means the sorting out of garments or parts of garments as required for various operations;

"stamping" means the stamping of sizes, identity or work numbers or other details on garments or parts of garments and/or labels.

Screen Printing Operations

(1) Category 4D employees:

"negative maker" means an employee who prepares photographic negatives, separates colours in a design, paints onto clear film sheet in repeat with exact reference marks, as part of the preparation of screens for screen printing;

"screen maker (engraver)" means an employee who engraves and cures screens;

"screen printer" means an employee engaged in--

- (a) operating a screen printing machine;
- (b) setting up screens in sequence of colour to be printed on fabric;
- (c) squaring off and testing that screens fit according to master feeler;
- (d) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;

D -13

- (e) positioning colours in correct sequence to ensure that colour combination matches the master feeler and colour card;
- (f) checking the base fabrics to ensure correct face and quality;
- (g) supervising the operations of the colour thrower;
- (h) supervising the handling of screens to and from wash bays;
- (i) examining screens from wash bays to ensure that they are in a satisfactory condition;
- (j) carrying out checks for faults;

(2) Category 4E employees:

"assistant screen maker (engraver)" means an employee who assists a screen maker (engraver);

"assistant screen printer" means an employee who assists in screen printing and who may screen print by hand;

"darkroom assistant" means an employee who makes photographic positives of clear sheets of design colours and masks positives for repeat;

"mixing and filtering operator" means an employee engaged in-

- (a) cleaning and preparing drums returned from printing machines;
- (b) cleaning mixing equipment;
- (c) ensuring thorough mixing and blending dyes and auxiliaries;
- (d) filtering mixed dyes;
- (e) handling drums from mixers to filter machines;
- (f) watching for malfunctions in mixing equipment;
- (g) operating a high-speed stirrer;
- (h) operating a tub washer;
- (i) removing solid or foreign articles from print paste;
- (j) supplying clean drums to colour weighers;
- (k) transferring identifying labels to drums of dye;

"oven and curing operator" means an employee engaged in drying and curing parts of garments after the printing operation;

"screen controller" means an employee engaged in-

- (a) applying masking tape set for automatic printing machine;
- (b) checking for faults and rectifying same;
- (c) clearing blockages by means of a high-pressure gun;
- (d) painting in any open motive pinholes;
- (e) painting in masking and making trial print proof;
- (f) placing screens in rack ready for use;
- (g) putting end rings into rotary screens;
- (h) retouching screens;

"screen preparer" means an employee engaged in-

- (a) coating screens;
- (b) fitting gauze to frames;

- (c) operating a stretching machine;
- (d) placing screens in conditioning chamber;
- (e) preparing and checking screen frames;
- (f) removing grease from screens;

"squeegee preparer" means an employee who makes and prepares squeegees.

4. WAGES

- A. The following provisions shall apply to employers and employees in the Clothing Sector of the Industry:
- (1) Subject to the provisions of subclauses (5) (a), (5) (b), (6), (8) and (9), not less than the following minimum wages shall be paid to the undermentioned categories of employees employed in the Clothing Sector of the Industry, from the date of coming into operation of this part of the Agreement and on each pay day thereafter: Provided that trainees whose increased experience as at 31 August 2013 entitles them to a higher wage in terms of the table below shall be paid the increased wage from the date of coming into operation of this part of the Agreement and on each pay day thereafter:

DESCRIPTION		GROUP A (I.E. EMPLOYEES ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (I.E. EMPLOYEES NOT ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
(A)	Pattern Maker and/or Grader:				
	(i) Qualified:	1607.70	1286.20	1615.20	1292.20
	(ii) Learners:				
	first six months of experience	579.00	463.20	581.60	465.30
	second six months of experience	749.40	599.50	752.90	602.30
	third six months of experience	922.20	737.80	926.60	741.30
	fourth six months of experience	1079.50	863.60	1084.50	867.60
	fifth six months of experience	1266.90	1013.50	1272.90	1018.30
	next four months of experience	1438.90	1151.10	1445.60	1156.50
	Thereafter, the wage specified in (A)(i) i.e.	1607.70	1286.20	1615.20	1292.20
(B)	Marker-In:				
	(i) Qualified:	1334.80	1067.80	1341.10	1072.90
	(ii) Learners:				
	first six months of experience	579.00	463.20	581.60	465.30
	second six months of experience	703.90	563.10	707.30	565.80
	third six months of experience	830.30	664.20	834.20	667.40
	fourth six months of experience	956.50	765.20	961.00	768.80
	fifth six months of experience	1082.70	866.20	1087.90	870.30
	next four months of experience	1209.10	967.30	1214.70	971.80
	Thereafter, the wage specified in (B)(i) i.e.	1334.80	1067.80	1341.10	1072.90
(C)	Mechanic:				
	(i) Qualified:	1301.90	1041.50	1308.00	1046.40

D -15

DESCRIPTION		GROUP A (I.E. EMPLOYEES ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (I.E. EMPLOYEES NOT ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	(ii) Learners:				
	first six months of experience	579.00	463.20	581.60	465.30
	second six months of experience	658.10	526.50	661.10	528.90
	third six months of experience	738.70	591.00	742.20	593.80
	fourth six months of experience	819.30	655.40	823.10	658.50
	fifth six months of experience	900.10	720.10	904.40	723.50
	sixth six months of experience	979.80	783.80	984.40	787.50
	seventh six months of experience	1060.90	848.70	1065.90	852.70
	eighth six months of experience	1141.20	913.00	1146.70	917.40
	next four months of experience	1221.90	977.50	1227.70	982.20
	Thereafter, the wage specified in (C)(i) i.e.	1301.90	1041.50	1308.00	1046.40
(D)	Chopper Out, Cutter and/or Re-Cutter, Negative Maker, Screen Maker (Engraver), Screen Printer, Sample Cutter:				
	(i) Qualified:	966.90	773.50	971.50	777.20
	(ii) Learners:				
	first six months of experience	579.00	463.20	581.60	465.30
	second six months of experience	675.20	540.20	678.40	542.70
	third six months of experience	772.80	618.20	776.50	621.20
	next four months of experience	871.10	696.90	875.20	700.20
	Thereafter, the wage specified in (D)(i) i.e.	966.90	773.50	971.50	777.20
*(E1)	Sample Machinist:	961.50	769.20	966.00	772.80
(E)(a)	Sewing Machinist:				
	(i) Qualified:	835.80	668.60	839.70	671.80
	(ii) Learners:				
	first six months of experience	579.00	463.20	581.60	465.30
	second six months of experience	642.30	513.80	645.40	516.30
	third six months of experience	705.70	564.60	709.10	567.30
	Thereafter, the wage specified in (E)(i) i.e.	835.80	668.60	839.70	671.80
(E)(b)	Finisher, Operator of a Linking, Overlocking and/or Sewing Machine; Invisible Mender Embroiderer, Embroidery Machinist (other than embroidery machine minder); Fagotter, Bader and/or Pleater by hand, Baster, Shaper, Fitter up; Checker, Presser of Garments, Assistant Screen Maker (Engraver), Assistant Screen Printer, Darkroom Assistant, Mixing and Filtering Operator, Oven and Curing Operator, Screen Controller, Screen Preparer, Squeegee Preparer and Despatch Packer:				
	(i) Qualified:	835.80	668.60	839.70	671.80
	(ii) Learners:				

D -16

DESCRIPTION		GROUP A (I.E. EMPLOYEES ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (I.E. EMPLOYEES NOT ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	first six months of experience	579.00	463.20	581.60	465.30
	second six months of experience	642.30	513.80	645.40	516.30
	third six months of experience	705.70	564.60	709.10	567.30
	next four months of experience	773.00	618.40	776.60	621.30
	Thereafter, the wage specified in (E)(i) i.e.	835.80	668.60	839.70	671.80
(F1)	Machinist promoted to Assistant Supervisor:				
	(i) Qualified:	993.30	794.60	997.90	798.30
	(ii) Learners:				
	first six months of experience	835.80	668.60	839.70	671.80
	second six months of experience	890.10	712.10	894.20	715.40
	third six months of experience.	942.50	754.00	947.00	757.60
	Thereafter, the wage specified in (F1)(i) i.e	993.30	794.60	997.90	798.30
(F)	Asst Supervisor, other than a Machinist promoted to Asst. Supervisor; Despatch/Factory Clerk and Storeman:				
	(i) Qualified:	993.30	794.60	997.90	798.30
	(ii) Learners:				
	first six months of experience	579.00	463.20	581.60	465.30
	second six months of experience	682.20	545.80	685.40	548.30
	third six months of experience	786.10	628.90	789.80	631.80
	next four months of experience	890.80	712.60	895.10	716.10
	Thereafter, the wage specified in (F)(i) i.e.	993.30	794.60	997.90	798.30
(G)	Other Pressers, not provided for elsewhere; Underpresser; Presser of shirts, ties, pyjamas and other nightwear, hats, caps, underwear, knitwear, aprons, overalls and blouses without lace, embroidery, tucks and handmade pleats; Machine belt-fixer; Maintenance Assistance; Layer-up; Plain Sewer; Operator of a button covering, zip tacking and/or pleating machine; an employee engaged on the Trubenizing of collars and/or Clicker and Shaper by template; General worker; Applique Cutter; Tracer and/or Marker and/or Framer; Pleater and Embroidery Machine Minder:				
	(i) Qualified:	693.40	554.70	696.60	557.30
	(ii) Learners:				
	first six months of experience	579.00	463.20	581.60	465.30
	second six months of experience	607.00	485.60	609.70	487.80
	third six months of experience	635.40	508.30	638.50	510.80
	next four months of experience	664.00	531.20	667.00	533.60

D -17

DESCRIPTION		GROUP A (I.E. EMPLOYEES ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (I.E. EMPLOYEES NOT ON THE 0.5% PRODUCTIVI TY INCENTIVE SCHEME)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	Thereafter, the wage specified in (G)(i) i.e.	693.40	554.70	696.60	557.30
(H1)	Foreman:	2193.30	1754.60	2203.60	1762.90
(H2)	Supervisor, Assistant Foreman, Head Cutter:	1196.20	957.00	1201.80	961.40
(H3)	Artisan:	2503.90	2003.10	2515.40	2012.30
(H4)	Labourer, Scooter Driver and/or Boiler Attendant:	770.50	616.40	774.10	619.30
(H5)	Watchman:	890.30	712.20	894.40	715.50
(H6)	Driver (Light Motor Vehicle):	877.60	702.10	881.70	705.40
(H7)	Driver (Medium Motor Vehicle):	938.40	750.70	942.60	754.10
	Sample Machinist. Any employee when called upon to perform the duties of a sample machinist, shall, while so employed be paid the wage of a sample machinist: Provided that such wage shall not be subject to the provision of clause 4 (2) (a) of this Agreement				
NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by 6.33% Across-the-Board.					

- (2) (a) Save as provided in subclauses (1), (2) (d) and (3), nothing in this part of the Agreement shall operate to reduce the personal wage of an employee.
- (b) Notwithstanding the provisions of subclause (1), an employee, other than a trainee, who, on the date of coming into operation of this part of the Agreement was entitled to a weekly wage in excess of the wage reflected in column 1 below for that employee's category of work, shall be entitled to receive from his employer the increase reflected in column 2 below from the date of coming into operation of this part of the Agreement and on each pay day thereafter:

Category	Wage – Group A			Wage Group B		
	Column 1 (R)	Column 2 (R)	New Employees on Incentivised Scheme = 80%	Column 1 (R)	Column 2 (R)	New Employees on Incentivised Scheme = 80%
A	1607.70	95.70	1286.20	1615.20	96.10	1292.20
B	1334.80	79.50	1067.80	1341.10	79.80	1072.90
C	1301.90	77.50	1041.50	1308.00	77.90	1046.40
D	966.90	57.60	773.50	971.50	57.80	777.20
E1	961.50	57.20	769.20	966.00	57.50	772.80
E (a)	835.80	49.80	668.60	839.70	50.00	671.80
E (b)	835.80	49.80	668.60	839.70	50.00	671.80
F1	993.30	59.10	794.60	997.90	59.40	798.30
F	993.30	59.10	794.60	997.90	59.40	798.30
G	693.40	41.30	554.70	696.60	41.50	557.30
H1	2193.30	130.60	1754.60	2203.60	131.20	1762.90
H2	1196.20	71.20	957.00	1201.80	71.50	961.40

H3	2503.90	149.10	2003.10	2515.40	149.70	2012.30
H4	770.50	45.90	616.40	774.10	46.10	619.30
H5	890.30	53.00	712.20	894.40	53.20	715.50
H6	877.60	52.20	702.10	881.70	52.50	705.40
H7	938.40	55.90	750.70	942.60	56.10	754.10

- (c) The provisions of subclause (2) (b) shall not apply to an employee earning more than twice the Category B wage.
- (d) Notwithstanding the provisions of subclause (2) (a) and, subject to the minimum wages prescribed in this clause, the wage agreed to between an employer and a new employee shall become the wage payable.

(3) New Employees

3.1 New employees shall be paid a weekly wage of 70% of the rate in metro areas, subject to the following provisions:

3.1.1 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a period of 3 years.

3.1.2 The provision is only applicable to compliant companies.

3.1.3(a) The new entry-level wage provision will continue in force and effect as an industry-wide provision after the 31st August 2014 if there has been an increase in employee strength of compliant employers in the industry of at least 15% as at 31st March 2014, monitored on a bi-annual basis.

3.1.3(b) The bi-annual benchmark monitoring shall be measured against the following schedule of new employment growth:

1 March 2012:	3% increase
1 September 2012:	6% increase
1 March 2013:	9% increase
1 September 2013:	12% increase
1 March 2014:	15% increase

3.1.4 It is only applicable to those compliant companies who were in existence and operational as at 1 June 2011.

3.1.5 All other provisions of the main agreement shall be applicable to new employees.

3.1.6 The closed shop shall be applicable to all new employees.

3.1.7(a) The employee strength to determine whether or not there has been an increase in employee strength will be measured by comparing the employee strength of compliant employers whose businesses are registered with the bargaining council on the 1st June 2011, as per clause 3.1.3, and to that of the employee strength of compliant employers whose businesses are registered with the bargaining council on the 31st March 2014, i.e. a period of 30 months following the implementation of this Agreement.

D -19

- (b) In the event that the employee strength does not increase as per the provisions of this *Agreement* and more specifically, the provisions of *Clause 3.1.3* above, the provisions of the new-entry wage provision will terminate.
- (c) Upon such termination of the application of the new entry level wage provision, the wages of all employees earning the new-entry wage will be increased to the full applicable gazetted wage for all job categories from the first pay week following the 31st August 2014, unless the parties during the 2014/2015 round of annual or other negotiations agree otherwise or agree to an alternative to address any further job losses or the absence of job growth in the industry.
- 3.1.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to employ employees at the rates specified in sub-clause 3.1.3 (a) above.
- 3.1.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 3.1.10 Qualified employees shall be employed at the qualified new entry rate, subject to sub-clause 3.1.1.
- 3.1.11 Effective 1st September 2011, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.
- (4) Incentivised Wage Rates

The 'new entry wage rates' provisions as specified in clause 4 of the 2011/2012 party-to-party substantive agreement shall be abolished and replaced with the following incentivised wage rates provisions, applicable to new employees only:

- 4.1 With effect 1 September 2012, new employees shall be paid a guaranteed wage of no less than 80% of the normal qualified gazetted wage rate applicable to current employees, subject to the following provisions:
- 4.2 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a minimum period of 3 years, unless the applicant employee agrees otherwise with his/her prospective employer.
- 4.3 The guaranteed wage rate as specified in sub-clause 4.1 above shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the qualified rate, provided the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1 September 2012, once a national framework agreement governing the incentive portion has been agreed.
- 4.4 The provisions of clause 4 of this circular is only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.

- 4.5 All other provisions of the industry's Main Agreement shall be applicable to new employees.
- 4.6 The closed shop shall be applicable to all new employees.
- 4.7 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to re-employ employees at the rates specified in sub-clause 4.1 above
- 4.8 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 4.9 Qualified employees shall be employed at the qualified rate, subject to sub-clause 4.2.
- 4.10 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party to party agreement, which was subsequently extended to non-parties and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus the annual increases, and subject to the companies at which they are employed meeting the compliant employment growth targets as set out in the 2011/2012 wage agreement.
- 4.11 Effective 1st September 2012, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.
- 4.12 The parties shall negotiate a national framework agreement at national bargaining council level, to give enabling effect to the plant level incentivised wage component as contemplated in sub-clause 4.3 of this agreement. This shall be finalised within a period of 4 months with effect from 1 October 2012 (excluding the annual shutdown period). Thereafter, companies who qualify for the provisions of clause 2 of this agreement and who wish to implement it shall have a 2 month period to conclude plant-level incentive arrangements in terms of the provisions of the national framework agreement.
- 4.13 The deadlock breaking mechanism for the national framework agreement is either binding interest arbitration or, at the end of the prescribed period, the entire 80% dispensation falls away, unless other forms of deadlock breaking mechanisms are agreed between the parties.
- 4.14 Should the 80% dispensation fall away in consequence of the provision in sub-clause 4.13 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreement rate.
- 4.15 The deadlock breaking mechanism for operationalising the incentive component at plant level shall consist firstly of a facilitation process by a panel of experts jointly appointed by the employer and trade union parties to this agreement and if not resolved, by an advisory award by the panel, unless other forms of deadlock breaking mechanisms are agreed to between the parties.
- 4.16 The parties agree that the only outstanding issue pertaining to the national incentivised framework agreement is the deadlock breaking mechanism.

D -21

The Parties agree to finalise this matter within two (2) weeks from the date of signing this agreement, failing which the provision of sub-clause 4.13 above will become effective.

- (5) Notwithstanding the definition of "experience", an employee who is transferred from any occupation to an occupation for which a higher qualified wage is prescribed, shall be dealt with as follows:
- (a) An employee transferred to the machinist occupation shall, if such employee has already completed six months' experience or more, be credited with six months' experience and, irrespective of the wage previously paid to him, he shall be paid a wage in accordance with his credited plus his actual experience as a machinist.
 - (b) If an employee who is a chopper-out is transferred to the class of marker-in, he shall be credited with actual experience as a chopper-out but with only four half-years. If his experience as a chopper-out exceeds four half years, he shall continue to receive the wage paid as a chopper-out or the wage according to his credited plus actual experience as a marker-in, whichever is the higher.
 - (c) In every other case of a transfer, not dealt with in (a) and (b) above, the employee shall be regarded as having no experience but shall continue to receive the wage he received prior to the transfer, until such time as he is entitled to receive an increase according to the experience gained in his new occupation.
 - (d) Should an employee be transferred back to his previous occupation, he shall revert back to the wage paid or due to him in that occupation, according to his experience.
 - (e) A qualified sewing machine operator who is transferred to the assistant supervisor category shall be credited with six months' experience as an assistant supervisor and shall be entitled to a wage in accordance with credited plus actual experience in that category.
- (6) Notwithstanding anything to the contrary contained in this part of the Agreement, the increase to which a learner may become entitled in terms of subclause (1) shall be paid on the first day of each half-year, on the basis of the learner's experience on the last working day.
- (7) Notwithstanding anything to the contrary contained in this part of the Agreement, the commencing wage of an employee who has had only bespoke dressmaking experience shall be determined, after a trial period not exceeding 20 working days, by the employer and employee concerned in conjunction with the Council. That employee shall then be deemed to be a learner starting with only that period of experience which could enable him to earn the wage agreed to by the employer, the employee and the Council.
- (8) Notwithstanding the provisions of this clause and the provisions of clause 7 (1) relating to weekly payment of wages, an employer shall be permitted to pay an employee whose weekly wage is greater than one-and-a-half times the qualified machinists' wages at that time, a monthly salary: Provided that the amount so paid shall not be less than four-and-one-third times the weekly wage paid or prescribed in this clause, whichever is the greater: Provided further that such monthly salary shall be paid during working hours and not later than the last working day of the month to which it relates.

This provision shall apply to both the Clothing and Millinery Sectors of the Industry.

D -22

B. The following provisions shall apply to employers and employees in the Millinery Sector of the Industry:

- (9) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the undermentioned classes of employees, employed at Millinery Sector establishments, shall be as follows:

D -23

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
(a)	Supervisor:	1349.30	1079.40	1352.50	1082.00
(b)	Milliner (Upgrade to Trimmer):				
	(i) Qualified	1070.20	856.20	1072.90	858.30
	(ii) Learners:				
	first six months of experience	758.20	606.60	760.00	608.00
	second six months of experience	829.10	663.30	831.00	664.80
	third six months of experience	910.30	728.20	912.40	729.90
	next four months of experience	1009.50	807.60	1011.90	809.50
	Thereafter, the wage specified in (b)(i) i.e.	1070.20	856.20	1072.90	858.30
(c)	(1) Blocker-Front (Upgrade from Assistant Blocker):				
	(i) Qualified:	900.60	720.50	902.70	722.20
	(ii) Learners:				
	first six months of experience	746.40	597.10	748.20	598.60
	second six months of experience	770.60	616.50	772.40	617.90
	third six months of experience	819.30	655.40	821.20	657.00
	next four months of experience	857.30	685.80	859.40	687.50
	Thereafter, the wage specified in (c)(1)(i) i.e.	900.60	720.50	902.70	722.20
	(2) Driver:	900.60	720.50	902.70	722.20
(d)	Machine Operator & Chopper-Out:				
	(i) Qualified:	833.30	666.60	835.30	668.20
	(ii) Learners:				
	first six months of experience	525.50	420.40	526.80	421.40
	second six months of experience	600.40	480.30	601.80	481.40
	third six months of experience	643.00	514.40	644.50	515.60
	next four months of experience	742.20	593.80	743.90	595.10
	Thereafter, the wage specified in (d)(i) i.e.	833.30	666.60	835.30	668.20
(e)	Trimmer/General Worker/Labourer/Assistant Blocker:				
	(i) Qualified:	710.30	568.20	712.00	569.60
	(ii) Learners:				
	first six months of experience	525.50	420.40	526.80	421.40
	second six months of experience	575.90	460.70	577.30	461.80
	third six months of experience	618.40	494.70	620.00	496.00
	next four months of experience	665.40	532.30	666.90	533.50
	Thereafter, the wage specified in (e)(i) i.e.	710.30	568.20	712.00	569.60
(f)	Boiler Attendant & Watchman:	776.80	621.40	778.90	623.10

NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by the agreed Wage Increase of 6.33% Across-the-Board.

- (10) Nothing in this part of the Agreement shall operate to reduce the wage of an employee who was paid higher than the prescribed minimum rate. Such employee shall continue to receive the higher rate, as if it were the minimum in respect of that employee. This provision shall also apply if an employee obtains employment with another employer in the Industry.
- (11) Any calculation of wages or deductions from wages shall be based on a five-day week, i.e. the weekly wage divided by five.
- (12) The minimum wage due to a monthly paid employee shall be calculated at four-and-a-third times the weekly wage due.
- (13) An employer who requires an employee of one class of his employees to perform the work of another class shall either pay-
 - (a) a wage calculated on the highest weekly rate than his own class for that period; or
 - (b) not less than the wage for the period calculated on the rate specified in the rising scale for the highest class, resulting in a higher wage than that of his own class: Provided that the provisions of this clause shall not apply where the difference between classes is based on age or experience.
- (14) Where an employer transfers an employee from one class of work to another, the Council shall be notified in writing of such transfer within 14 days of the date on which the change was put into operation: Provided that where any such change has been in operation for a period less than two weeks and the work which he was performing prior to the change, no notification need be sent to the Council as herein specified.

5. BONUS SCHEMES, TASK WORK AND PIECEWORK

- (1) No employees shall be employed on task work or piecework in any workplace: Provided that an employer may agree with any one or more of his employees for the payment of bonuses for any work performed by such employee or employees in excess of the normal day's or week's work, subject to clause 9, having been mutually agreed upon between the employer and the employee or employees: Provided further that such bonus system shall enable an employee to earn a bonus amounting to at least 10 per cent of the relative prescribed wage for an employee of his class.
- (2) Any employer who wishes to introduce a bonus system in his workplace or to effect alterations in one already operating, shall, prior to the introduction or alteration thereof, furnish the under-mentioned information to the Secretary of the Council and obtain the Council's approval of such system or alteration, and no bonus system shall be introduced or altered without the Council's approval:
 - (a) The rate of the bonus and the method of calculating the amount payable as a bonus;
 - (b) the period in respect of which the bonus is calculated from time to time;
 - (c) the day upon which the amount of the bonus earned by an employee during each such period is payable.
- (3) The provisions of subclause (2) hereof shall not have the effect of rendering it unlawful for any employer to continue to operate a bonus system of which he has notified the Council under any previous agreement for the Industry.

6. SHORT TIME

- (1) Where short time has been or is introduced on any workplace after notifying the Council in writing, an employee who is not required to work on any day shall be given notice of that fact not later than closing time on the working day prior to the day on which his services are not required, except that, if short time is to be worked on a Monday or starting from a Monday, an employee who is not required to work on such Monday shall be given notice of the fact not later than closing time on the preceding Thursday in the case of the Clothing Sector of the Industry and by not later than 12:00 the previous Friday in the case of the Millinery Sector of the Industry.
- (2) An employee who attends the workplace on any day shall, unless he has received notice in terms of subclause (1) that his services will not be required on such day, be employed or be paid a full day's wages.
- (3) Where full time is not being worked in any workplace, the work shall be distributed evenly among the employees in each of the sections or departments concerned.

7. PAYMENT OF AMOUNTS DUE TO EMPLOYEES

A. The following provisions shall apply to employers and employees in the Clothing Sector of the Industry:

- (1) Subject to the provisions of clause 13 (5) of the Agreement, wages and other amounts due to employees shall be paid weekly in cash, during working hours on Friday, or may be deposited into the employee's account with a financial institution: Provided that where an employee's services terminate on a day other than a Friday, any amounts due to him shall be paid immediately upon such termination: Provided further that when an employee is working short time or the ordinary pay day is a holiday, payment in terms of this subclause shall be made before the employee finishes work for the week.

In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.

- (2) No deduction of any description shall be made from amounts due to an employee except as provided below:
 - (a) Where an employee is absent from work other than at the request or on the instructions of the employer, a pro rata amount for the actual time lost may be deducted from his total remuneration;
 - (b) subject to the provisions of clause 6 (1) of this part of the Agreement, where short time has been introduced, a deduction not exceeding the amount of the employee's hourly wage in respect of each hour not worked may be made;
 - (c) where an employer closes his workplace during the month of December and/or January owing to the holiday recess and his employees have been paid holiday pay in terms of the provisions of clause 12, wages may be deducted for the actual period of the holiday recess but not exceeding a period of 15 working days;
 - (d) where an employer supplies an employee with tea, he may deduct 40c per week from his wages;
 - (e) with the consent of the employee, deductions may be made by an employer for insurance or pension funds, or for dental plates and other dental work not otherwise provided for, or for purposes of repaying any money owing to Council funds or other benefit funds operated by the Council;
 - (f) contributions to Council funds shall be deducted;
 - (g) contributions to the Medical Benefit Society shall be deducted;

- (h) the cost of equipment supplied to employees may be deducted in terms of clause 16 of this part of the Agreement;
 - (i) if, owing to the stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wages of such employee only for the time lost in excess of two hours;
 - (j) any amount paid by an employer on behalf of an employee in order to comply with any law or order of court may be deducted;
 - (k) with the written consent of an employee, deductions may be made from the wages and/or holiday pay for amounts owing to an employer in respect of money borrowed and in respect of goods purchased by the employee from the employer: Provided that the amounts so deducted in respect of such goods purchased shall not exceed one-third of the amount due to the employee as wages or holiday pay;
 - (l) contributions to the Slack Pay Fund shall be deducted;
 - (m) contributions to the Provident Fund shall be deducted;
 - (n) an employer shall deduct trade union subscriptions and levies from trade union members on written authorisation, other than where an exemption has been granted by the Bargaining Council: Provided such monies have been determined in terms of the union's constitution; the employer shall forward such amounts so deducted to the Secretary of the Council; PO Box 1142, Woodstock, 7915, for transmission to the union;
 - (o) contributions to the Sick Pay Fund shall be deducted;
 - (p) an amount may be deducted in respect of the cost of an over-all supplied as provided in clause 16 (2) of this part of the Agreement.
- (3) (a) All cash payments to employees shall be made in sealed envelopes which shall be retained by the employee.
- (b) Payments may be made by bank transfer, bank deposit or by cheque.
- (c) Payments must be accompanied by a payslip with the following details: Name and factory number of the employee, the weekly wage, number of hours worked, amount earned for the time worked, amount of any bonuses earned, amount of holiday pay (if any), details of all deductions made from such amount, the amount contained in the envelope and the week in respect of which the wages are paid.
- (4) Particulars of all deductions made shall be entered in the wage register.
- (5) An employee, on commencement of maternity leave, shall be entitled to a payment in terms of clause 7 (7) (d) of the Fund Collective Agreement.
- (6) (a) Each employee must be paid a bonus on the day of his employer's annual closure in December of each year, equivalent to 2,57% of his total annual basic wage calculated from 1 January to 31 December: Provided that a pro rata share of the bonus shall be paid to an employee who leaves employment before the annual closure.
- (b) The bonus is inclusive of and not additional to any bonus paid by an employer.
- (c) For purposes of calculating this bonus, absences of any nature may not be taken into consideration.

B. The following provisions shall apply to employers and employees in the Millinery Sector of the Industry:

- (1) Wages and other amounts due to an employee shall be paid weekly during working hours: Provided that where an employee's services are terminated on a day other than a pay day, any amounts due shall be paid immediately upon such termination. Failure

D -27

to pay the amounts immediately, the employer shall pay the employee four hours' pay for every day that the employee is required to collect amounts due at the workplace.

- (2) Pay may be made in cash or by cheque, or may be deposited into the employee's account with a financial institution, or by bank transfer: Provided that there is prior consultation to reach agreement on who would bear the additional costs which arise in consequence.
- (3) Payment shall be accompanied by a pay slip with the following details of the employee:
 - (a) The name, occupation and clock-card number;
 - (b) the date of employment;
 - (c) the rate of pay;
 - (d) the total ordinary hours worked;
 - (e) the overtime hours worked and the overtime rate;
 - (f) any other payments due to the employee;
 - (g) the deductions made and the reason for the deductions; (h) the period in respect of which payment is made; and
 - (i) the actual amount paid to the employee.
- (4) Payment in cash shall be made in an envelope and during working hours.
- (5) Where an employee is working short time, or the nominated pay day is a holiday, payment shall be made before the employee finishes work for the week.
- (6) No deductions of any description shall be made from an employee's remuneration, other than the following:
 - (a) Whenever an employee is absent from work, other than on the instruction or at the request of his employer.
 - (b) When an employee commences employment with an employer after the beginning of the working week of the workplace concerned, a deduction proportionate to the actual time lost may be made from the remuneration of such employee.
 - (c) Where short time has been introduced, a deduction may be made for the actual time not worked.
 - (d) Where an employer closes his workplace during the December shutdown, wages may be deducted for the actual period of the holidays recess up to a maximum of 15 working days.
 - (e) With the written consent of the employee, deductions may be made by an employer for insurance, provident or pension funds, or for dental plates or dental work not otherwise provided for, or for purposes of repaying a housing loan in terms of a housing loan scheme, approved by the Council.
 - (f) Contributions to the-
 - (i) Council;
 - (ii) Medical Benefit Society;

- (iii) Sick Pay Fund;
 - (iv) Provident Fund.
- (g) Where, owing to the stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wage of such employee for time lost in excess of two hours.
- (h) Where an employer is legally or by an order of a competent court required or permitted to deduct any amount.
- (i) With the consent of the employee, deductions may be made by an employer for contributions to the funds of the trade union.
- (7) Each employee shall be paid a bonus on the day of his employer's annual closure in December of each year, equivalent to one week's wages: Provided that a pro-rata share of the bonus shall be paid to an employee who leaves employment before the annual closure.
- (8) The bonus is inclusive of and not additional to any bonus paid by an employer.
- (9) For purposes of calculating the bonus, absence of any nature may not be taken into consideration.

8. PROPORTION OR RATIO OF EMPLOYEES

The following provisions shall apply to employers and employees in the Clothing Sector of the Industry:

- (1) An employer shall not employ an unqualified employee unless he has in his employ two qualified employees, and for every two qualified employees not more than three unqualified employees shall be employed: Provided that for the purpose of this subclause an unqualified employee receiving not less than the total wage of a qualified employee of his class shall be reckoned as a qualified employee: Provided further that employees, for whom a flat rate of payment is prescribed, shall not be included for the purposes of this subclause.
- (2) Notwithstanding the provisions of subclause (1), no employer shall employ an assistant supervisor unless he has in his employ a supervisor, and for each supervisor he has in his employ, not more than three assistant supervisors shall be employed.

The following provisions shall apply to employers and employees in the Millinery Sector of the Industry:

- (3) One qualified milliner and one qualified trimmer shall be employed before a trainee milliner or trimmers may be employed in a workplace. For every five trainee milliners and/or trimmers employed in a workplace, at least one qualified milliner and one qualified trimmer shall be employed.
- (4) One qualified machine operator shall be employed before employing any other trainee machine operators. For every qualified machine operator, two trainee machine operators shall be employed.

9. HOURS OF WORK

- (1) An employer shall not require or permit an employee, other than an employee referred to in subclause (4)-

D -29

- (a) (i) to work for more than 40 hours, excluding meal intervals, in any one week at a Clothing Sector establishment;
 - (ii) For more than 41 hours in any one week at a Millinery Sector establishment;
 - (b) to work for more than five days in any week;
 - (c) on Saturdays or Sundays;
 - (d) (i) to work more than eight hours per day: Provided that extra time not exceeding 30 minutes per day may be worked on a Monday, Tuesday, Wednesday, and Thursday, if the working time on Friday of such wage week is shortened by the extra time worked or to be worked on the other four days if the employee is employed at a Clothing Sector establishment;
 - (ii) for more than eight and a half hours a day, excluding Friday, where the normal hours shall be half an hour less if the employee is employed at a Millinery Sector establishment;
 - (e) (i) to work before 07:00 or later than 16:45 or during the rest intervals provided for in subclause (2), on any day from Monday to Friday, inclusive, if the employee is employed at a Clothing Sector establishment;
 - (ii) before 07:30 or after 18:00 from Monday to Friday or during the rest interval, if the employee is employed at a Millinery Sector establishment;
 - (f) (i) to work more than five hours, without a meal interval of not less than 30 minutes and not more than one hour's duration, except in accordance with the provisions of clauses 10 of this part of the Agreement if the employee is employed at a Clothing Sector establishment;
 - (ii) to work for longer than five hours without an uninterrupted interval of at least one hour if the employee is employed at a Millinery Sector establishment.
- (2) Rest intervals of not less than 10 minutes, during which no work shall be performed, shall be allowed to each employee not later than two hours after the commencement of the morning work period and as near as practicable in the middle of the afternoon work period, and such intervals shall be regarded as time worked. Utensils and boiling water for making tea shall be provided by the employer and be made available to the employees at the commencement of each rest interval and meal interval every day from Monday to Friday, inclusive.
- (3) An employer may only require or permit an employee to perform nightwork, if so agreed, and if-
- (a) the employee is compensated by the payment of an allowance, which may be a night shift allowance, or by a reduction of working hours; and
 - (b) transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's night shift.
- This provision shall not apply to the Millinery Sector.
- (4) **Exclusions:** The provisions of this clause shall not apply to a watchman: Provided that the watchman shall not be required to work-
- (a) for more than 45 hours per week as from 1 December 2000; or

- (b) for more than six days in anyone week:

Provided further that the employer may require his watchman to work on the seventh day of the week and pay the watchman in addition to his weekly wage an amount equal to two-sixths of such weekly wage in respect of work done on such seventh day.

This provision shall not apply to the Millinery Sector.

- (5) In the case of Millinery Sector establishments, the Council shall be notified of any change in the hours of work.

(6) **Twilight Shift**

- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:

- (i) only unemployed people may be recruited for working this shift.
- (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
- (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.

- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:

- (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
- (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
- (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.

- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:

- (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
- (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

10. OVERTIME AND SUNDAY WORK

- (1) Overtime, that is time worked in excess of the hours prescribed in clauses 9 (1) (a) and (d), and 4 (a) and (b), may not be worked in excess of the limitations laid down in subclause (2) without the prior written consent of the Council.

D -31

- (2) Notwithstanding the provisions of clause 9 (1), an employer may, subject to the provisions of this clause, permit an employee to work overtime: Provided that no employer shall permit any employee to work overtime-
- (a) for more than two hours on any working day;
 - (b) on more than three consecutive days;
 - (c) for more than 10 hours in any calendar week;
 - (d) on more than 60 days in any year;
 - (e) after completion of his ordinary working hours, for more than one hour on any day, unless he has-
 - (i) given notice thereof to such employee before midday; or
 - (ii) provided such employee with an adequate meal before he has to commence overtime; or
 - (iii) paid such employee an allowance of R5,00 in sufficient time to enable the employee to obtain a meal before the overtime is due to commence.
- (3) Payment for overtime worked shall be made at the rate of one-and-a-half times the hourly wage for each hour or part of an hour so worked from Monday to Saturday.
- (4) An employer shall pay an employee who works on a Sunday, double the employee's rate of pay for the number of hours worked.
- (5) No employee shall be required to work overtime without his consent.
- (6) No employee shall be dismissed or prejudiced in his employment by reason of his refusal to work overtime.
- (7) No employee shall be required or permitted to work overtime between the hours of 18:00 and 06:00.
- (8) *Exclusons:* The provisions of subclauses (2) (b), (3) and (4) shall not apply to a watchman.
- (9) Aggregation of Overtime

For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 9 of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
 - (ii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
 - (iii) time not worked as a result of the employer having declared short time;
 - (iv) time not worked as a result of the employee being on authorised shop steward stewards time off; and
 - (v) the three days family responsibility leave provided for in clause 9 of this part of the Agreement.
- (10) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

11. REGISTRATION OF AN EMPLOYER

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of the previous agreement, shall within seven days of the date on which this part of the Agreement becomes binding furnish to the Secretary of the Council such particulars as are relevant, in the form and manner specified by the Council.
- (2) Where an employer carries on business as a partnership, company or close corporation, the particulars required by the Council shall be provided in the form and manner specified by the Council, in respect of each partner, director or member of the business, as the case may be.
- (3) When an employer's business undergoes any of the following changes, the employer shall furnish to the Secretary of the Council a notice in writing setting out full particulars of such change within seven days of its taking place:
 - (a) A change of name;
 - (b) a change of address;
 - (c) changes in the composition of its members or partners or directors;
 - (d) the sequestration or liquidation of the business;
 - (e) the transfer or abandonment of the business;
 - (f) the acquisition of another business which is covered by the Agreement;
 - (g) the commencement of any other business covered by this part of the Agreement.

12. HOLIDAY LEAVE

- (1) Every employer shall, subject to the provisions of subclause (2), in the month of December of each year and not later than the 24th of that month, grant to each of his employees who has been in his employ from any date prior to the first day of February of the same year, and whose services have not been terminated before 1 December, 15 working days' holiday on full pay: Provided that an employee who during any year has been absent from work for a continuous period of six months or more on confinement or 12 weeks or more for any other reason, shall be paid holiday pay in terms of subclause (2). No such employee shall be paid less than three weeks' wages as annual leave pay. The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of the employee before commencement of the period of holiday leave.
- (2) An employee-
 - (a) who commenced work with an employer on or after 1 February in any year; or
 - (b) who commenced work with an employer before 1 February in any year, and whose employment terminated before 1 December of that year, shall be paid in lieu of holiday leave for the period of employment in that year an amount equal to "a" divided by "b" x "c" x "d", where-
 - a = 15 days
 - b = 12
 - c = actual weekly wage divided by 5
 - d = number of months of employment in the current year.The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of that year or, if the employee's employment terminates before that day, on the day he leaves the employer's service except as provided for in clause 13 (5) of this part of the Agreement.

D -33

The provision of paragraph (a) and (b) shall not apply to employees employed in the Millinery Sector of the Industry, to whom paragraph (c) below shall apply:

- (c) An employee who commenced employment after 1 February, or who terminates his services before the first day in December, shall be paid holiday pay equivalent to 1,25 days' pay for every completed month of service.
- (3) In determining the period of employment in respect of which holiday pay must be calculated in terms of subclause (2), the expression "employment" shall be deemed to include any period during which an employee-
- (a) is absent from work on the instructions or at the request of the employer;
- (b) is on sick leave, provided a medical certificate for the period or periods of absence has been produced;
- (c) is on maternity leave, provided a medical certificate to this effect has been produced;
- amounting in the aggregate in any year to not more than 12 weeks in respect of the periods referred to in paragraphs (a) and (b) plus up to six months in respect of the period referred to in paragraph (c).
- (4) Every employer shall grant to each of his employees, including watchmen, New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day, Day of Goodwill as paid holidays, and no employer shall employ an employee and no employee shall work on these twelve (12) days and, in addition, each employer shall grant to all of his employees who have worked the whole morning period of the Thursday preceding Good Friday time off from the commencement of the normal meal interval until the normal closing time and such time lost shall be regarded as time worked: Provided that where an employee is absent on the employer's instructions, he shall be entitled to payment for the Thursday afternoon period preceding Good Friday: Provided further that if an employee has to work on any public holiday, such employee shall be remunerated at time and a half the ordinary hourly rate for the time so worked, in addition to the entitlement of the day's pay.
- (5) In the event of an employer closing his factory in terms of subclause (1) for a period which includes the Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's Day such employer shall pay a full day's pay in respect of each of such day to each of his employees in his employ on the date he so closes his factory. In addition, he shall pay a full day's pay in respect of these four paid public holidays to each employee whose contract of service is terminated on or after the 15th day of November but before the date he closes his factory: Provided that such an employee has been in continuous employment of his employer for a period of not less than six months immediately prior to the 15th day of November: Provided further that the contract is not terminated by the employee concerned or that he is not summarily dismissed for any good cause recognised by law as sufficient.

The provisions of this subclause shall not apply to cases where the reason for the employer's closing his factory is his intention forthwith to discontinue business in the Industry. For the purposes of this subclause, the expression "employment" shall have the same meaning as in subclause (3).

The above provisions of this subclause shall not apply to the Millinery Sector of the Industry, in respect of which the following shall apply:

An employee whose services are terminated on or after 1 December, shall be paid a full day's wage in respect of the Day of Reconciliation, Christmas Day, the Day of Goodwill and New Year's Day: Provided that this shall not apply in the case of an employee who is dismissed on the grounds of misconduct or who commenced employment later than 1 July of that year.

- (6) For the purposes of this clause, "day's pay" means the "weekly wage" divided by five, and "full pay" means the "wage" paid immediately prior to the commencement of the holiday leave prescribed in subclause (1).
- (7) In the event of New Year's Day, Human Rights Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day, or the Day of Goodwill, falling on a Saturday or Sunday, the employer shall, subject to subclause (5) of this clause, pay to each of his employees an extra day's pay on the first day after such day or when payment for these days is payable in terms of this clause or, alternatively, shall grant the Monday following such public holiday as a holiday and shall pay a day's pay to each of his employees in respect thereof.
- (8) Notwithstanding the provisions of clause 7 (2), an employer may close his establishment on any other three days with the consent of the majority of his employees, and in that event shall not be obliged to pay wages in respect of such days: Provided that he shall afford his employees the opportunity of working in the time lost in respect of any such days, on any day other than a Sunday, at ordinary rates of pay should the majority of his employees so agree: Provided further that an employer shall notify his employees of his intention to close the workplace on such days by means of a notice posted in a prominent place in his workplace at least 24 hours prior to the usual starting time of the first day of closure, and that the Council be notified thereof in writing.
- (9) (a) An employee is entitled to six consecutive months' unpaid maternity leave.
- (b) An employee may commence maternity leave-
- (i) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
- (ii) on a date from which a medical practitioner or midwife certifies that it is necessary for the employee's health or that of her unborn child.
- (c) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
- (d) 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.
- (e) 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-
- (i) commence maternity leave; and
- (ii) return to work after maternity leave.
- (f) Notification in terms of subparagraph (e) must be given-
- (i) at least four weeks before the employee intends to commence maternity leave; or
- (ii) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (10) (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.
- (b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if-
- (i) the employee is required to perform nightwork, as defined in this part of

- the Agreement, or her work poses a danger to her health or safety or that of her child; and
- (ii) it is practicable for the employer to do so.
- (11) (a) An employer must grant an employee who has been in his employ for longer than four months, three days' unpaid family responsibility leave, which the employee is entitled to take-
- (i) when the employee's child is born;
- (ii) when the employee's child is sick; or
- (iii) in the event of the death of-
- (aa) the employee's spouse or life partner; or
- (ab) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.
- (b) An employee may take family responsibility leave in respect of the whole or a part of a day.
- (c) Before granting an employee family responsibility leave in terms of this subclause, an employer may require reasonable proof of an event contemplated in paragraph (i) (a) for which the leave was required.
- (d) An employee's unused entitlement to leave in terms of this subclause lapses at the end of the annual leave cycle in which it accrues.
- (e) **Exclusions:** The provisions of this clause shall not apply to a watchman: Provided that a watchman shall be granted four weeks' holiday leave on full pay, plus payment of an amount equal to one-quarter of his weekly wage, during each period of 12 months' employment: Provided further that should such watchman's employment be terminated before such leave is granted he shall be paid in lieu of such leave two-and-a-fifth times his daily wage in respect of each complete month of employment, calculated from the date of commencement of his employment or from the first day after the last 12 months' period in respect of which he was granted four weeks' holiday leave, as specified in this subclause.
- For the purposes of this subclause, the daily wage of a watchman shall be one-sixth of his weekly wage.
- The provisions of paragraph (e) above shall not apply to employees employed in the Millinery Sector of the Industry.
- (12) The following sick leave provisions shall apply only to employees employed in the Millinery Sector of the Industry:
- (a) All employees shall be entitled to 10 days' sick leave on full pay in any 12 months.
- (b) During the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

13. TERMINATION OF EMPLOYMENT

- (1) Subject to the provisions of paragraphs (d), (e) and (f) of this subclause, written notice of not less than five working days, which for the purposes of this clause shall include paid holidays, to take effect from the working day following that on which it is given shall be given by an employer or an employee to terminate a contract of service: Provided that this shall not affect-
- (a) the right of an employer or employee to terminate the contract of service without notice for any cause recognised by law as sufficient;

- (b) any written agreement between the employer and the employee providing for a longer period of notice than one week: Provided further that-
- (i) an employer may pay an employee wages for and in lieu of the period of notice specified in this clause or agreed upon in terms of subclause (1) (b);
 - (ii) an employee who is working short time may terminate his employment without giving notice;
 - (iii) the first 20 working days, in respect of weekly paid employees, or the first 35 days in respect of monthly paid employees, of the period of employment of an employee by an employer shall (unless otherwise stated in a written agreement) be deemed to be a trial period and such employment may be terminated either by the employer or by the employee at any time within such trial period by giving 24 hours' notice;
- (c) Monthly paid employees employed in the Clothing Sector of the Industry shall give or be given not less than 30 days' notice in writing, to be given in advance on the first or the 15th day of the month to take effect from such day;
- (d) monthly paid employees employed in the Millinery Sector of the Industry shall give or be given not less than two weeks' notice, in writing.
- (2) An employee put off during the currency of any period of notice given in terms of subclause (1) shall receive full pay for such week, or in the case of a monthly paid employee, full pay for the unexpired period of such notice.
- (3) No employer shall terminate the services of any employee by reason of such employee's-
- (a) approaching confinement;
 - (b) absence from work through illness: Provided that-
 - (i) the employer is notified within three working days of the commencement of such illness; and
 - (ii) a medical certificate for the period of absence is provided on the employee's return to work;
 - (c) absence on leave, upon obtaining written permission from the employer for such leave.
- (4) Subject to the provisions of subclause (3), the employment of an employee who absents himself from work for a period of five consecutive working days without notifying his employer may be terminated by the employer without notice: Provided that-
- (a) the employer attempts to contact the employee in writing at the last-known address supplied by the employee;
 - (b) the employee shall be allowed to lodge with his employer a written appeal against his dismissal.
- (5) If an employee leaves without notice, the employer shall have the right to withhold an amount not exceeding the weekly wage if the employee is paid a weekly or monthly wage if such employee is paid monthly, in lieu of notice: Provided that the Council shall be notified in writing and any money owing to the employee after the above deduction, shall be sent to the Council's offices within seven days of the fifth day of absence.

The provisions of this subclause shall mutatis mutandis apply to any termination of employment in terms of subclause (1) (a).

- (6) If an employee leaves without notice, the employer shall have the right to withhold an amount not exceeding the weekly wage of such employee, and the employee's service

D -37

card, together with any balance of wages and holiday pay due, shall be forwarded to the Secretary of the Bargaining Council, P O Box 1142 Woodstock, 7915, not earlier than the tenth day nor later than the 21st day of such absence. Any amount so withheld by the employer shall be forfeited by the employee concerned unless such employee can prove that he did not leave without notice.

- (7) 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 12.
- (8) Subject to the provisions of subclause (3) (b), no notice shall be given during absence on sick leave or confinement leave as provided for in clause 12 (9).
- (9) Notwithstanding the provisions of subclauses (1), (3) and (4), no employer shall, in terms of the Act, unfairly terminate the services of on an employee.

14. SEVERANCE PAY

- (1) An employer shall pay an employee who is dismissed for reasons based on the employer's operational requirements severance pay equal to at least one week's wages for each completed year of continuous service with that employer: Provided that previous employment with the same employer must be taken into account if the break between the periods of employment is less than one year.
- (2) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer shall not be entitled to severance pay in terms of subclause (1).
- (3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable in terms of this part of the Agreement.
- (4) Until 1 April 2008, where an employee aged 50 years or older, subject to sub-clause (5) below, is retrenched, such employee shall receive the stipulated enhanced Provident Fund benefits due in terms of the rules (if any) read the constitution of the fund. With effect from 1 April 2008, the benefit enhancement will cease, as described in sub-clause 4 (f) above. Until 1 April 2008, the employer's liability in respect of retrenchment benefits for such employee shall be limited to the payment of the difference between the said enhanced Provident Fund benefit and the amount of severance pay reflected in sub-clause (1) above where the enhanced Provident Fund benefit is less than the severance pay. With effect from 1 April 2008, the employer's liability in respect of retrenchment benefits will be the amount of severance pay reflected in sub-clause (1) above. However, to the extent that the employer is compliant, the employer may claim an offset from the Fashion Industry Protection Fund as is provided for in sub-clause 35 (21).
- (5) Where an employee reaches the stipulated retirement age of 60 years or older, the employer shall have no liability for retrenchment pay.

15. PREMIUMS

No premium shall be charged or accepted by an employer for the training of an employee.

16. OVERALLS AND EQUIPMENT**A1. OVERALLS (provisions for employers and employees in the Clothing Sector of the Industry)**

- (1) Every employer shall, within three months of the commencement of employment of an employee, issue an employee with a new overall and shall thereafter issue such employee with a new overall annually: Provided that if overalls were issued to an employee in terms of the former clause 25, the new overall shall be issued to such employee not later than 1 July of each year. An employee to whom such overalls have been issued in terms hereof shall be required to wear such overalls during all working hours, and shall be responsible for the good condition and laundering, away from the workplace where he is employed, of such overalls: Provided further that an employer may launder such overalls and withdraw the right of employee to take such overalls away from the workplace where he is employed.
- (2) An employee shall, on termination of his services, return the overall last issued to him, and should an employee fail to return the overall, the employer shall be entitled to deduct R5,00 from his wages and/or holiday pay.
- (3) For the purpose of this clause, the terms "overall" shall include protective garments approved by the Council.
- (4) Every employer shall keep a record of overalls issued reflecting the name of the employee receiving the overall, the signature of the employee, the date of issue and date of return and shall retain such record for inspection by the Council's designated agents, as required.

A2. OVERALLS (provisions for employers and employees in the Millinery Sector of the Industry)

- (1) An employer shall, within six months of the commencement of employment of an employee or six months of the date of publication of this part of the Agreement, issue every employee with two new overalls of the required size and as approved by the Council. Thereafter, two overalls shall be issued to every employee every 12 months.
- (2) An employee to whom such overalls have been issued in terms hereof shall be required to wear such overalls during all working hours and shall be responsible for the good condition and laundering of such overalls away from the workplace where he is employed: Provided that an employer may launder such overalls and withdraw the right of an employee to take such overalls away from the workplace where he is employed. Nothing contained in this subclause shall be so construed as to reduce the obligations imposed on any employer in regard to protective clothing and appliances as laid down in the Occupational Health and Safety Act, 1993, or the regulations published under that Act.
- (3) Should an employer fail to provide his employee with an overall or overalls as specified in subclause (1) within 60 days of the due date of issue, such employer, having been given two weeks' written notice by the Council, shall be liable to pay to his employee, as penalty, an amount equal to R1,50 per overall not issued in respect of every period of 30 days which has lapsed from the due date of issue of such overall or overalls.
- (4) It shall be compulsory for an employee who has been issued with an overall or overalls in terms of subclause (1) to wear such overall or overalls while at work, and the employer shall have the right to warn an employee failing to wear an overall at work and to notify such employee, in writing, that he must appear at work wearing an overall on the working day following the day on which the notice is given. Should an employee fail to appear at work wearing an overall for five consecutive days, due notice in writing having been given to the employee, the employer shall have the right to issue such employee with an overall and deduct R1,50 from the wages of such defaulting employee. The deduction referred to in this clause shall be made from the due wages of the employee on the first pay day following the failure to appear with an overall or on the first pay day after the issue of the new overalls.

B. EQUIPMENT (Provisions for employers and employees in the Clothing Sector of the Industry only)

- (1) Every employer shall supply equipment to his employees who need them for the purpose of their employment, at the price paid therefor by the employer.
- (2) The cost of such equipment may be deducted from the employee's wages in weekly instalments, as mutually agreed upon between the employer and employee.
- (3) The employer shall keep the equipment in good order, free of charge.
- (4) An employee shall be responsible for the replacement of equipment issued to him that has been lost, provided that the employer supplied the employee with individually lockable storage for such equipment.

17. CONTRACTS**(1) Existing contracts:**

Any contract of service in operation at the date of commencement of this part of the Agreement or concluded subsequent to such date shall be subject to the provisions of this part of the Agreement.

(2) Fixed term contracts:

- (a) An employer may engage fixed-term contract employees for a specific period and/or until the completion of a specific short-term task
- (b) any employee engaged on a fixed-term contract must be employed, subject to the same terms and conditions as prescribed in this Collective Agreement and other employees of the same job category;
- (c) a fixed-term contract must be reduced to writing and must stipulate the commencement and termination dates and/or completion date of the contract task;
- (d) copies of all fixed-term contracts (as well as accompanying exemption applications where applicable) concluded in the Industry must be forwarded to the Secretary of the Council, P O Box 1142, Woodstock, 7915, for registration and processing by no later than seven days after commencement of duty of such employee.

18. ENGAGEMENT OF PERMANENT AND CONTRACT EMPLOYEES

- (1) An employer shall, before engaging an applicant for work, require such applicant to produce a service card issued by the Council, in the form and manner specified by the Council : Provided that, in the case of persons who have not previously been employed in the Clothing Industry (Northern Areas), a period of seven days may elapse before production of the service card shall be required.
- (2) If, during or on completion of the trial period in terms of clause 13 (1) (b) (iii), the contract of service is confirmed, the employer shall immediately on such confirmation enter in the service card the name of his factory, occupation of the employee, date of commencement of employment and prescribed wage of such employee and forward the card, within three days of such confirmation, to the Secretary of the Council, P O Box 1142, Woodstock, 7915, for checking, together with a statement in the form and manner specified by the Council.
- (3) Such information as is required by the Council shall be taken from the service card as soon as reasonably possible, after which the card shall be returned to the employer

who shall retain it until the employee leaves his employ, whereupon the employer shall enter on the card the date of termination of employment and the prescribed wage on termination and return the card to the employee. The employee shall thereupon surrender his doctor's card in exchange for his service card: Provided that if the employee is unable to surrender his doctor's card the employer shall immediately forward the service card to the Council's office, where the employee may make application for the service card.

- (4) If, during a period of employment, an employee is transferred from one occupation to another, the employer shall, immediately on such transfer, enter in the service card the new occupation of the employee, the date of such transfer and the wage paid to such employee on the date of transfer, and forward the card to the Secretary of the Council, P O Box 1142, Woodstock, 7915, for checking, together with a statement in the form and manner specified by the Council.
- (5) The employer shall complete and transmit to the Regional Chamber a record, in the form and manner specified and supplied by the Regional Chamber, of all engagements, terminations, the first or last dates of absences from work for four or more consecutive pay weeks and transfers in occupation of employees in respect of that week: Provided that where in any week no changes have been effected, a "Nil" return shall be submitted.

19. EXEMPTIONS

(A). For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
 - (a) The period for which the exemption is sought;
 - (b) the number of employees affected and how many of such employees are members of a registered trade union;
 - (c) the clauses and subclauses of this part of the Agreement from which the exemption is sought;
 - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
 - (e) the demonstrable commercial need of the applicant for the exemption sought.
- (4) (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.

D -41

- (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been rejected.
 - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
 - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.
 - (e) Subject to the time period for considering the application referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
 - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
 - (g) If the application has been granted or partially granted, the Exemptions Committee 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 exemption(s) will be valid;
 - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
 - (iv) the full name of the exempt employer or employee(s).
 - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
 - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the

Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.

- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such fee shall be consistent with-
 - (i) the cost incurred for the hearing of the appeal;
 - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall, in addition, have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6)
 - (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
 - (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
 - (c) The provisions of subclause (4) shall, read with the changes required by the context, apply equally to the appeal process.
 - (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
 - (a) There is a demonstrable commercial need for the exemption.
 - (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
 - (c) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted result in a conflict with the primary objectives of the Act.
 - (d) The exemption will not undermine collective bargaining and labour peace in the industry.
 - (e) There has been compliance with subclause (3) above.
 - (f) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
 - (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.
 - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.

D -43

- (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability.
 - (d) The terms of the exemption sought, including the period thereof.
 - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
 - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
 - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
 - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
 - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
 - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
 - (k) What hardship may eventuate to employees in the event of the exemption being granted.
 - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
 - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.

20. POWERS OF DESIGNATED AGENTS AND APPOINTED CONCILIATORS AND ARBITRATORS

- (1) 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 part of the Agreement in terms of clause 21 of this part of the Agreement or the Disputes' Procedure in terms of clause 22 of this part of the 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 designated agent to 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;
 - (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;
 - (e) inspect and retain, for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the designated agent.
- (2) A subpoena issued for any purpose in terms of subclause (1) must be signed by the Secretary of the Council 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.
- (3) The written authorisation referred to in subclause (1) (d)-
 - (a) If it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 14 of the Constitution of the Republic of South Africa, 1996, and then only on the application of the designated agent 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;

D -45

- (b) in all other cases, may be given by the Secretary of the Council.
- (4) 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 facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.
- (5) The designated agent must issue a receipt for any book, document or object seized in terms of subclause (4).
- (6) 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 in terms of this clause.
- (7) The designated agent must pay to each person who appears before him in response to a subpoena issued the specified witness fee, as may be determined by the Council from time to time.
- (8) A person commits contempts of the designated agent-
 - (a) if, after having been subpoenaed 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 (6);
 - (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 the Act;
 - (g) if the person insults or disparages or belittles a designated agent, or prejudices or improperly influences an investigation, or improperly anticipates a designated agent'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.
- (9) The designated agent may refer any contempt to the Labour Court for an appropriate order.

21. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT

- (1) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement. If, whether through its own investigations or through any other source, it appears that the provisions of this part of the Agreement have been breached, then the following procedure shall apply to enforce compliance:
 - (a) The Council shall request a designated agent to investigate the alleged breach and/or refer the matter to the Council.
 - (b) If, upon completion of the investigation, the designated agent has reason to believe that this part of the Agreement has been breached, the designated agent may endeavour to secure compliance with the Agreement through conciliation.

- (c) At the end of the conciliation process, the designated agent shall submit a report to the Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this part of the Agreement through conciliation and the outcome thereof.
- (d) Upon receipt of the report, the Secretary 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 of the Council decides to refer the matter to arbitration, he must appoint an arbitrator to hear and determine the alleged breach of this part of the 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 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) legal practitioner; or
 - (ab) an office-bearer or official of his trade union or employers' organisation and, if the party is a juristic person, by a director or employer thereof.
- (i) The arbitrator shall have the following powers:
 - (i) To determine whether there has been a breach of the Agreement;
 - (ii) to make an appropriate award that gives effect to the 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 or for the Council to recover its costs of providing the arbitration service: Provided that where the Council's accredited conciliator has made an advisory award in terms of clause 22 (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-

D -47

- (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; notice of the arbitration proceedings 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 part of the 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 commission;
 - (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 Secretary of the Council may apply to make the arbitration award on order of the Labour Court in terms of section 158 (1) of the Act.

22. DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
- (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
 - (b) The Council shall, from time to time, adopt, by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.
 - (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same rights, powers and obligations as the Council.
- (2) **Accreditation**
- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
 - (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

(3) ***Panel of conciliators, arbitrators and senior arbitrators***

- (a) The Council shall appoint:
- (i) a panel of conciliators, for the purpose of conciliating disputes;
 - (ii) a panel of arbitrators, for the purpose of determining disputes;
 - (iii) a panel of senior arbitrators, for the purpose of determining disputes where
 - (aa) the nature of the questions of law raised by the dispute;
 - (bb) the complexity of the dispute;
 - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
 - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
- (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.
 - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
 - (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' lists shall 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 General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant 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 arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3)(d) above, the Council may remove a member of

D -49

the panel of conciliators or arbitrators from office:

- (i) for serious misconduct; or
 - (ii) owing to incapacity; or
 - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3)(c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3)(i), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

(4) *Dispute involving non-parties to the Council*

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council, shall be resolved by the Council in accordance with the following procedure-

(a) *Referral and conciliation of disputes:*

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.
- (iv) The conciliator may, during conciliation proceedings:
 - (aa) mediate the dispute;
 - (bb) conduct a fact-finding exercise; and

- (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4)(a)(iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

(b) Adjudication of disputes referred to the Council for arbitration:

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:
 - (aa) the Act requires that the dispute be arbitrated; or
 - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) 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 the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to:
 - (aa) give evidence;
 - (bb) call witnesses;
 - (cc) question the witnesses of any other party;
 - (dd) address arguments to the arbitrator;

D -51

- (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.
- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord, and without limiting the generality thereof, 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;
 - (bb) the award is ambiguous or contains an obvious error or omission;
 - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

(5) Disputes involving parties to the Council -

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in

subclause (4) above, subject to subclause 5 (d) below.

- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

(6) Compliance procedure and enforcement of collective agreements by Council -

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
- (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber.
- (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by the Council, where these exist, by-
- (aa) publicising the contents of the agreement;
- (bb) conducting inspections;
- (cc) investigating complaints;
- (dd) endeavouring to secure compliance with the agreement through conciliation; or
- (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
- (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
- (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
- (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the

D -53

arbitration on the parties to the dispute.

- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclause 4(b)(v) to (4)(b)(xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
 - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
 - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
 - (cc) charging a party to the arbitration an arbitration fee;
 - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
 - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
 - (ff) any award contemplated in section 138(9) of the Act;
 - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of subclause (6) shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure shall stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

(7) Non-Compliance

- (a) Outsourcing to non-compliant companies shall not be permitted in the industry.
- (b) The parties shall enter into agreements with all Provincial and Local governments which shall have the effect that their sourcing from the Industry shall include a requirement to only source from companies which hold a valid Certificate of Compliance from the bargaining council.

(8) Compliance Promotion

- 8.1 All current non-compliant companies which meet a minimum of 80% of the party-to-party *negotiated wage rate for* current employees, shall be regarded as level B compliant, subject to sub-clause 8.2 below.

- 8.2 All companies described in 8.1 above shall achieve 100% wage compliance within a period of 18 months from 1 September 2012, in 6 monthly equal increments, failing which full compliance enforcement including the execution of writs shall apply to them.
- 8.3 The arrears of non-compliant companies shall be ring-fenced in a 'suspense account' at 100% of the verified arrears value and a written time-bound repayment plan agreed with the bargaining council. They should also sign a legally enforceable acknowledgement of debt.
- 8.4 The current policy that allows for a maximum of 6-months as a repayment period for arrears shall be amended, to allow for a maximum eighteen (18) months repayment period with effect from 1 November 2012.
- 8.5 The arrears will become payable in full should the employer become non-compliant, or default on the repayment plan at any time in future, unless otherwise agreed by the parties.
- 8.6 At every future meeting of the National Bargaining Council, each party shall make one practical concrete suggestion on how to further promote compliance in the industry.
- 8.7 The National Bargaining Council General Secretary shall have unfettered authority to serve any writ of execution upon any employer who fails to become compliant in terms of the new compliance provisions envisaged in this agreement, unless the parties agree otherwise.
- 8.8 Nothing in this agreement shall have the effect of downward migration of conditions of employment for any current employee.
- 8.9 The Trade Union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of this agreement.

23. EXHIBITION OF AGREEMENT

Every employer shall keep exhibited in his workplace, in a place readily accessible to his employees, a legible copy of this part of the Agreement in one official language.

24. PROHIBITION OF EMPLOYMENT OF CHILDREN AND OF FORCED LABOUR

- (1) No person may employ a child-
 - (a) who is under 15 years of age; or
 - (b) who is under the minimum school-leaving age in terms of any law, if this is 15 or older.
- (2) No person may employ a child in employment-
 - (a) that is inappropriate for a person of that age;
 - (b) that places at risk a child's well-being, education, physical or mental health, or spiritual, moral or social development.
- (3) Subject to the Constitution of the Republic of South Africa, 2996, all forced labour is prohibited.

D -55

- (4) No person may, for his own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subclause (1).
- (5) A person who contravenes subclause 5 (1) to (4) commits an offence.

25. AGENCY SHOP: EMPLOYERS' ORGANISATION

- (1) Every employer that belongs to the employers' organisation shall pay the membership fee referred to in subclause (3).
- (2) Every employer that does not belong to the employers' organisation shall pay the levy referred to in subclause (3).
- (3) The amount of the monthly membership fee or monthly levy shall be calculated in accordance with the following formulae:
 - (i) an employer employing 60 or fewer employees, a total of R250.00 per month (exclusive of VAT);
 - (ii) an employer employing 61 or more employees, R4.25 (exclusive of VAT) per employee times the number of employees for whom wages are prescribed in this part of the Agreement.
- (4) Every employer shall pay the monthly amount to the Regional Secretary of the Northern Chamber of the National Council, P O Box 1142, Woodstock, 7915, before the 15th day of each month, together with an analysis of the amounts received, after withholding a collection fee as determined and agreed upon from time to time by the parties to the Council.
- (5) The Regional Secretary of the Northern Chamber of the National Council shall deposit all monies received in terms of this clause into the Northern Chamber's account and at the end of each month-
 - (a) pay all membership fees received to the employers' organisation; and
 - (b) deposit all the levies received into a separate account administered by
- (6) The monies held in the separate account may be used only for expenditure incurred by the employers' organisation relating to collective bargaining or dispute resolution in the Industry and may not be-
 - (a) paid to a political party as an affiliation fee; or
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office.
- (7) The employers' organisation shall arrange for an annual audit of the separate account within six months of its financial year by an auditor who-
 - (a) conducts the audit in accordance with generally accepted auditing standards;
 - (b) reports in writing to the employers' organisation, and in this report expresses an opinion as to whether or not the employers' organisation has complied with the provisions of its constitution relating to financial matters and the provisions of subclause (6).
- (8) The employers' organisation shall submit to the Northern Chamber of the National Council, within 30 days of receipt of the auditor's report referred to in subclause (7), a certified copy of that report.

- (9) Any person may inspect the auditor's report submitted to the Northern Chamber of the National Council in terms of subclause (8) at the Northern Chamber's offices, 148 Kerk Street, Johannesburg.
- (10) The Northern Chamber of the National Council shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.
- (11) The Independent Exemptions Body may, on application from an employer who conscientiously objects to associating with persons other than those who share his religious beliefs, grant an exemption from the provisions of this clause.
- (12) Any dispute about the application, including enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator: Provided that the parties mutually agree on such conciliator and arbitrator. If no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator, who must be senior counsel, shall be appointed from the ranks of an accredited agency.

26. TRADE UNION LABOUR

A. EMPLOYMENT OF TRADE UNION LABOUR

- (1) No employer who is a member of the employers' organization shall continue to employ an employee-
 - (a) who, while being eligible for membership of the trade union, is not a member of the trade union as at the date of coming into operation of this part of the Agreement; or
 - (b) who does not become a member of the trade union within a period of 90 days from such date.
- (2) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the trade union or employers' organisation, or who have been refused membership of or expelled from the trade union or employers' organisation.
- (3) Every employer shall forward all deductions made from the remuneration of employees in respect of trade union membership fees to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, within seven days of the end of the week in which the deductions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward the amounts to the secretary of the trade union, together with such analyses of the amounts as are received from employers.
- (4) For the purposes of this part of the Agreement no union membership subscriptions may be-
 - (a) paid to a political party as an affiliation fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

B. RIGHTS AND ACCESS TO PREMISES

- (1) Any office-bearer or official of a representative trade union is entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve members' interests.
- (2) A representative trade union is entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union are entitled to vote at the employer's premises in any election or ballot contemplated in the union's constitution.
- (4) The rights conferred by this clause are subject to any conditions as to time and place that are reasonable and necessary to safe-guard life or property or to prevent the undue disruption of work.
- (5) The authorised person or persons shall notify the employer or his representatives of his intention to visit the workshop.
- (6) The trade union shall have reasonable access to facilities at the workplace, including the use of the telephone, notice boards and a venue for trade union representative meetings, where such facilities are available, subject to the following:
 - (a) Such facilities shall be available during the normal working hours of that business, while normal output is maintained, including tea and lunch breaks.
 - (b) The granting of facilities shall be subject to prior agreement from management, which agreement shall not unreasonably be withheld, and the facilities shall be used for industry-related matters. Such industry-related matters shall be defined by the Council from time to time.
 - (c) The scale of facilities shall be subject to the individual circumstances of a workplace.
- (7) The trade union shall be entitled to distribute the union newspaper at the workplace.
- (8) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.
- (9) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

C. TRADE UNION REPRESENTATIVES

- (1) Trade Union representatives shall be granted ten days' paid time off per annum, pooled for each workplace and to be divided between various trade union representatives at the discretion of the union: Provided that-
 - (a) all such leave shall be subject to the operational requirements of the workplace;
 - (b) in the case of employers employing five or fewer employees, the union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause;
 - (c) in the case of employers not referred to in paragraph (b), the union shall give the employer one days' notice of the activity for which it seeks time off in terms of this clause; and
 - (d) all leave granted in terms of this clause shall be used to attend bona fide industry-related trade union activities.

D. TRADE UNION AGENCY SHOP

- (1) **Scope-** Agency fees will apply to employees who –
 - (a) are not members of the trade union party, but are eligible for membership thereof;
 - (b) are not bound by the provisions of the closed shop clause; and
 - (c) fall within the scope of this part of the Agreement.
- (2) **Union membership:** Employees are not compelled to become members of the trade union party.
- (3) **Agency fee deductions:** Every employer to whom this clause applies shall:
 - (a) deduct from the wages of an employee an amount equivalent to the union subscription; and
 - (b) pay such monies to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, within seven days from the end of the month in which the deductions fall due.
 - (c) deduct the agency fee from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be -
 - (a) paid to a political party as an affiliate fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

27. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2014: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 September 2013.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

28. ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) The Council shall conduct a survey on the extent and type of contract work in the clothing industry.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.

29. PRODUCTIVITY

The Productivity Scheme which was agreed to is:

Contained in Annexure B.

- (1) The bargaining council shall establish a dedicated productivity unit to promote productivity issues in the industry, as part of the NBC's value-added services.
- (2) The bargaining council shall commission a feasibility study for the establishment of a training institute similar to the previous Clothing Industry Training Board (CITB), to be operated under the auspices of the bargaining council as part of the NBC's value-added services.
- (3) Absenteeism
 - (i) The memorandum of Understanding as concluded between the parties on 14 June 2007 and implemented shall remain in effect for the duration of the Agreement only.
 - (ii) Where companies' have introduced the productivity scheme as per the provisions of the absenteeism MOU, such schemes are extended for the duration of this agreement, subject to plant level agreements entered into and signed off.

30. INDUSTRY PROTECTION FUND

Contained in Annexure C.

31. HIV/AIDS

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment as set out in Annexure A to this agreement shall be policy in the industry.

World International HIV/AIDS Day

The industry acknowledges the importance of creating awareness of the HIV/AIDS pandemic. To this end, employers are encouraged to grant employees on World International HIV/AIDS Day thirty minutes paid time off to participate in awareness activities agreed to at industry level.

32. CONTRACT EMPLOYEES

Contained in Annexure D.

33. COUNCIL FUNDS

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

- (1) (a) Every employer shall, on the pay day of each week and from the first pay day after this Agreement comes into operation, deduct an amount equal to 0,23% of each employee's wages per week calculated at the qualified machinists rate of pay up to a maximum of R1.95 per week for whom minimum wages are prescribed in the Main Collective Agreement: Provided that no deduction shall be made from the wages of an employee who has worked for less than 20 hours in the week in which the deduction falls due.
- (b) An employer, shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute an amount equal to 0.23% of each employee's wages per week, calculated at the qualified machinists' rate of pay up to the maximum of R2,11 per week.
- (2) The employer shall forward the total amounts so deducted, together with his contributions in terms of subclause (1) (b) above, and a statement in the form and manner specified by the Council, to the Secretary of the Council, P O Box 1142, Woodstock, 7915, within seven days of the end of the week in which the deductions fall due.
- (3) Should any amount due in terms of this clause not be received by the Council by the seventh day after the due date in respect of which it is payable, the employer shall pay weekly interest on such amount or on such lesser amount as remain unpaid, calculated at the prime overdraft rate of the Council's Bankers plus two per cent per annum divided by 52 or part thereof from such seventh day 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 the payment of such interest or part thereof. At the discretion of the Council, the interest may accrue to the general funds of the Council.

34. WORKING IN ARRANGEMENTS

Employees shall be permitted to work in the time lost due to strike action incurred during the September / October 2009 protected wage strike at normal rates of pay, provided that this is agreed to at plant level and further provided that where agreed, such employees shall be offered a loan equal to between one week and two weeks' wages, deductible from their wages in equal weekly amounts over a 10 week period.

ANNEXURE A**CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS
AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING
INDUSTRY OF SOUTH AFRICA****1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:
 - eliminating unfair discrimination in the workplace based on HIV status;
 - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
 - promoting appropriate and effective ways of managing HIV in the workplace;
 - creating a balance between the rights and responsibilities of all parties.

2. OBJECTIVES

- 2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
 - (i) creating a non-discriminatory work environment;
 - (ii) dealing with HIV testing, confidentiality and disclosure;
 - (iii) providing equitable employee benefits;
 - (iv) dealing with dismissals; and
 - (v) managing grievance procedures.

- 2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:
- (i) creating a safe working environment for all employers and employees;
 - (ii) developing procedures to manage occupational incidents and claims for compensation;
 - (iii) introducing measures to prevent the spread of HIV;
 - (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
 - (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:
- (i) between employers, employees and the trade union in the workplace; and
 - (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

3. POLICY PRINCIPLES

- 3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5. Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

4. APPLICATION AND SCOPE

- 4.1. All employers and employees within the clothing manufacturing industry, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this code, the term "workplace" should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.
- 4.3. This Code, however, does not impose any legal obligation in addition to those in the Employment Equity Act, the Labour Relations Act and this code, or in any other legislation referred to in the Code.

- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

5. LEGAL FRAMEWORK

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:

- (i) Employment Equity Act, No. 55 of 1998;
- (ii) Labour Relations Act, No. 66 of 1995;
- (iii) Occupational Health and Safety Act, No. 85 of 1993;
- (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
- (v) Basic Conditions of Employment Act, No. 75 of 1997; and
- (vi) Medical Schemes Act, No. 131 of 1998.
- (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.

- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.

- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.

5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.

5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.

5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.

5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).

5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.

5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

- 5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].
- 5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT

- 6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:

- (i) recruitment procedures, advertising and selection criteria;
- (ii) appointments, and the appointment process, including job placement;
- (iii) job classification or grading;
- (iv) remuneration, employment benefits and terms and conditions of employment;
- (v) employee assistance programmes;
- (vi) job assignments;
- (ix) training and development;
- (x) performance evaluation systems;
- (xi) promotion, transfer and demotion;
- (xiii) termination of services.

- 6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:

- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
- (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
- (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
- (iv) providing support for all employees infected or affected by HIV and AIDS; and
- (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE

7.1. HIV Testing

- 7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

- 7.1.2. Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts. ^{1[1]}
- 7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out in item
- 7.1.4. Authorised testing
- Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:
- (i) during an application for employment;
 - (ii) as a condition of employment;
 - (iii) during procedures related to termination of employment;
 - (iv) as an eligibility requirement for training or staff development programmes; and
 - (v) as an access requirement to obtain employee benefits.
- 7.1.5. Permissible testing
- (a) An employer may provide testing to an employee who has requested a test in the following circumstances:
 - (i) As part of a health care service provided in the workplace;
 - (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
 - (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.
 - (b) Furthermore, such testing may only take place within the following defined conditions:
 - (i) At the initiative of an employee;
 - (ii) Within a health care worker and employee-patient relationship;
 - (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
 - (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.
- 7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.
- 7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

^{1[1]} The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the National Bargaining Council for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

- 7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.^{2[2]} Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

7.2. Confidentiality and Disclosure

- 7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.
- 7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.
- 7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:
- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
 - (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
 - (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

8. PROMOTING A SAFE WORKPLACE

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:
- (i) the risk, if any, of occupational transmission within the particular workplace;
 - (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
 - (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
 - (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
 - (v) the procedures to be followed in applying for compensation for occupational infection;
 - (vi) the reporting of all occupational accidents; and
 - (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

^{2[2]} See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
- (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.

- 9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

10. EMPLOYEE BENEFITS

- 10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits
- 10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

11. DISMISSAL

- 11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.
- 11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

12. GRIEVANCE PROCEDURES

- 12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.
- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.

- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

13. MANAGEMENT OF HIV IN THE WORKPLACE

- 13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:

13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and

13.1.2. Long and short term measures to deal with and reduce this impact, including:

- (i) An HIV/AIDS Policy for the workplace
- (ii) HIV/AIDS Programmes, which would incorporate:
 - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
 - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
 - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE

- 14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.

14.2. Broadly, impact assessments should include:

- (i) Risk profiles; and
- (ii) Assessment of the direct and indirect costs of HIV/AIDS;

14.3. Risk profiles may include an assessment of the following:

- (i) The vulnerability of individual employees or categories of employees to HIV infection;
- (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
- (iii) A profile of the communities from which the organisation draws its employees;
- (iv) A profile of the communities surrounding the organisation's place of operation; and
- (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.

14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:

- (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
- (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;

- 14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE

15.1. A Workplace HIV/AIDS Policy

- 15.1.1. Every workplace should develop an HIV/AIDS policy^{3[3]}, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;
- (ii) an outline of the HIV/AIDS programme;
- (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);
- (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
- (v) grievance procedures in line with item 12 of this Code;
- (vi) set out the means of communication within the organisation on HIV/AIDS issues;
- (vii) details of employee assistance available to persons affected by HIV/AIDS;
- (viii) details of implementation and coordination responsibilities; and
- (ix) monitoring and evaluation mechanisms.

- 15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including the trade union, employee representatives, occupational health staff and the human resources department.

- 15.1.3. The policy should reflect the nature and needs of the particular workplace.

- 15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:

- (i) communicated to all concerned;
- (ii) routinely reviewed in light of epidemiological and scientific information; and
- (iii) monitored for its successful implementation and evaluated for its effectiveness.

15.2. Developing Workplace HIV/AIDS Programmes

- 15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

- 15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:

- (i) hold regular HIV/AIDS awareness programmes;
- (ii) encourage voluntary testing;

^{3[3]} This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

- (iii) conduct education and training on HIV/AIDS;
- (iv) promote condom distribution and use;
- (v) encourage health seeking behaviour for STD's;
- (vi) enforce the use of universal infection control measures;
- (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
- (viii) endeavour to establish a wellness programme for employees affected by HIV/AIDS;
- (ix) provide access to counselling and other forms of social support for people affected by HIV/AIDS;
- (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
- (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4
- (xii) regularly monitor, evaluate and review the programme.

15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

16. INFORMATION AND EDUCATION

- 16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.
- 16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.

GLOSSARY

<i>Affected employee</i>	an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive
<i>AIDS</i>	AIDS is the acronym for "acquired immune deficiency syndrome". AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
<i>Epidemiological</i>	The study of disease patterns, causes, distribution and mechanisms of control in society.
<i>HIV</i>	HIV is the acronym for "human immuno deficiency virus". HIV is a virus which attacks and may ultimately destroy the body's natural immune system.
<i>HIV testing</i>	taking a medical test to determine a person's HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of 'risk behaviour' (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee's or job applicant's HIV status.
<i>HIV positive</i>	having tested positive for HIV infection.
<i>Infected employee</i>	an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
<i>Informed consent</i>	a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
<i>Policy</i>	a document setting out an organisation's position on a particular issue.
<i>Pre and post test counselling</i>	a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
<i>Reasonable Accommodation</i>	means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
<i>STDs</i>	acronym for "sexually transmitted diseases". These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.
<i>Surveillance Testing</i>	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

ANNEXURE B**PRODUCTIVITY****The following provisions shall be applicable to the plant level productivity incentive schemes:**

- (1) Employers shall pay an amount of 0.5% of the weekly wage into a dedicated productivity incentive bank account. This must be done on a weekly basis or on the date that wages is normally paid, if it is paid at a time other than weekly.
- (2) The money in this productivity incentive bank account is ringfenced for the introduction of plant level productivity incentive schemes only.
- (3) This productivity incentive scheme bank account shall be opened and authorised on the basis of co-signatures, as follows: a person nominated by management plus a SACTWU shop steward (where there are no shop stewards at a workplace, a representative nominated by the workers shall be the second signatory).
- (4) With effect from 1 September 2008, each workplace shall have a period of 2 months within which they must reach agreement between management and the union about how the productivity incentive scheme at that workplace will function and how the incentives are to be paid.
- (5) If there is no productivity incentive scheme agreement reached by 1 November 2008, all the monies in the productivity bank account must be paid out to the workers as part of their wages, until an agreement on an appropriate productivity incentive scheme is reached.
- (6) The productivity incentive scheme agreements reached must ensure that all workers covered by the terms of this agreement, not just some, shall benefit from the incentive scheme.
- (7) All productivity scheme agreements reached must be registered with the National Bargaining Council for the Clothing Manufacturing Industry, within 1 month after agreement has been reached.
- (8) Productivity incentive scheme agreements shall not contain any provisions, which have the effect of downward variation of any term or condition of employment.
- (9) The productivity incentive scheme envisaged in this agreement shall be in addition to and not in place of any existing productivity incentive scheme, which may currently exist.
- (10) If the workplace closes or is liquidated, all the money left in the productivity incentive bank account must be paid out to the employees at that workplace and who are covered by the terms of this agreement.

D -73

ANNEXURE C**INDUSTRY PROTECTION FUND**

- (1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Bargaining Council, where such programmes are aimed at protecting the Industry in the respective Region.
- (3) The Fund shall commence on such date as decided by the parties to the Regional Council and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 12 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4) above, contribute an amount of 15 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the payment date specified in the relevant part of the Agreement and in the form and manner specified in relevant clause of each part of the Agreement.
- (7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber of the Bargaining Council for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.
- (8) The moneys collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in sub-clause (2), and including
 - (a) "Buy Local" campaigns;
 - (b) Combating customs fraud and illegal imports; or
 - (c) for such other strategies as meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Regional Employers' Associations who are members of the Bargaining Council become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in sub-clause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber.

- (10) The Fund's moneys shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the Regional Employers' Association is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the Regional Employers' Association, as the case may be, may request confirmation in advance from the Regional Chamber in this regard.
- (12) No moneys of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the Regional Employers' Association and the Regional Chamber have signed a written agreement.
- (13) Any interest that is earned on Fund moneys at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the Regional Employers' Association shall, as the need arises, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan shall be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the parties shall be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he or she is satisfied that the expenditure-
 - (a) is in terms of the approved plan;
 - (b) is clearly classified by strategy, activity and the nature of the expense; and
 - (c) has been authorised by the Regional Secretary or National Secretary of SACTWU, or the Executive Director of the Regional Employers' Association.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure shall be presented to the Regional Chamber for approval prior to payment.

- (16) Any expenses that have been incurred by SACTWU or the Regional Employers' Association for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the Regional Employers' Association, may be recovered by the Regional Chamber from SACTWU or the Regional Employers' Association, as the case may be.
- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to the Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the Regional Employers' Association shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund and for which funds have been disbursed.
- (19) In the event that there is a disagreement between the parties as to whether any activity or expenditure or proposed activity or expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the

D -75

dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.

- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

ANNEXURE D**CONTRACT EMPLOYEES**

- (1) Those contract employees with 12 months' or more employment with the same employer shall be converted into permanent employees.
- (2) All contract employees shall be entitled to receive a pro-rata share of all statutory payments due to permanent employees.
- (3) All contract employees who are in employ as at the end of November each year shall be entitled to full payment for all public holidays which fall during the annual shutdown period.
- (4) Employees who have completed a learnership shall not be placed on a further contract period after the completion of such a learnership, but shall be employed as a permanent fulltime employee.
- (5) Where there are more beneficial arrangements (other than those set out in sub-clauses (1) to (4) above) governing the employment of contract workers, such provisions shall remain effective.

PART E:

**CONSOLIDATED
AGREEMENT
FOR THE
NORTHERN
REGION
(KNITTING)**

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY**NATIONAL MAIN COLLECTIVE AGREEMENT**

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

Cape Clothing Association

Coastal Clothing Manufacturers' Association

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

¹South African Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' 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 National Bargaining Council for the
Clothing Manufacturing Industry.

¹ *This Employer association has not signed the 2013/2014 Party-to-Party Agreement, however, remains an Employer Party to the Bargaining Council and, hence, is reflected on this page.

1. SCOPE OF APPLICATION

The terms of this Agreement shall be observed in the Clothing Manufacturing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

- Part A Provisions for the Eastern Cape Region
- Part B Provisions for the Free State and Northern Cape Region
- Part C Provisions for the KwaZulu-Natal Region
- Part D Provisions for the Northern Region (Clothing)
- Part E Provisions for the Northern Region (Knitting)
- Part F Provisions for the Western Cape Region (Clothing)
- Part G Provisions for the Western Cape Region (Country Areas)
- Part H Provisions for the Western Cape Region (Knitting)
- Part I Provisions for the Non-Metro Areas

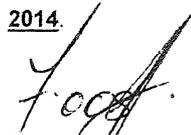
by the employers and employees in the Clothing Industry who are members of the employers' organisations and the trade union, respectively.

2. PERIOD OF OPERATION OF THIS AGREEMENT

- (1) This agreement is binding on the parties hereto from 1 September 2013 until 31 August 2017 unless the parties agree otherwise in writing.
- (2) The parties record that they intend to request the Minister of Labour to extend this agreement to non-parties in the Clothing Industry in terms of section 32 of the Labour Relations Act 66 of 1995. The period of operation of this agreement in respect of non-parties will be determined by the Minister.

Original Agreement signed at CAPE TOWN on behalf of the Parties the 24TH day of FEBRUARY

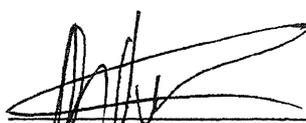
2014.



FREDA GOSTHUYSEN
Chairperson



MARTHIE RAPHAEL
Vice-Chairperson



SICELO NDUNA
General Secretary

PART E : PROVISIONS FOR THE NORTHERN REGION (KNITTING)**1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed-
- (a) by all employers who are members of the employers' organisation and who are engaged in the Knitting Industry, and by all employees who are members of the trade union and who are employed in the Industry;
- (b) in the Magisterial Districts of Alberton, Benoni, Germiston, Johannesburg and Roodepoort as well as only those portions of the City of Tshwane, including only those portions of the Southern Pretoria Metropolitan Substructure, the Central Pretoria Metropolitan Substructure and the Northern Pretoria Metropolitan Substructure established in terms of the Premier of the Province of PWV Proclamation No 38 of 1994 published in Provincial Gazette Extraordinary No 5064 of 8 December 1994 as amended by the Premier's Notice No 43 of 1995 published in Provincial Gazette Extraordinary No 66 of 1 September 1995, which previously made up the 'municipal area of Pretoria' as such existed immediately prior to the establishment of the Transitional Metropolitan Council with Transitional Metropolitan Substructures in respect of the Greater Pretoria Metropolitan Area published under aforementioned Proclamation No 38 of 1994.
- (2) Clauses 1 (1) (a), 2, 13A(1) to (3) and (5) and 28(5) of this part of the Agreement shall not apply to employers and employees who are non-members of the employers' organisation and trade union, respectively.
- (3) The Table of contents of this Part E of the Main Collective Agreement are as follows:

CLAUSE NO:	DESCRIPTION
1.	SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT
2.	PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT
3.	DEFINITIONS
4.	REMUNERATION
5.	PAYMENT OF AMOUNTS DUE TO EMPLOYEES.....
6.	HOURS OF WORK.....
7.	OVERTIME AND SUNDAY WORK
8.	ANNUAL LEAVE AND PAID HOLIDAYS
9.	TERMINATION OF EMPLOYMENT
10.	ENGAGEMENT IN EMPLOYMENT
11.	COUNCIL FUNDS
12.	EXTRACTS FROM WAGE REGISTERS
13.	TRADE UNION LABOUR
14.	PROHIBITION OF EMPLOYMENT OF CHILDREN AND OF FORCED LABOUR.....
15.	REGISTRATION OF AN EMPLOYER
16.	EXEMPTIONS

CONTINUES ON PAGE 322—PART 3



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette

No. 10167

Regulasiekoerant

Vol. 586

Pretoria, 14 April 2014

No. 37509

PART 3 OF 5

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

17.	POWERS OF DESIGNATED AGENTS.....
18.	FIXED-TERM CONTRACTS
19.	MEDICAL BENEFIT SOCIETY
20.	SICK PAY FUND
21.	SHORT TIME
22.	KNITTING INDUSTRY PROVIDENT FUND (NORTHERN AREAS)
23.	SAFEGUARD OF WORKERS' EARNINGS
24.	SEVERANCE PAY
25.	OVERALLS
26.	AGENCY SHOP: EMPLOYERS' ORGANISATION
27.	PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT ..
28.	DISPUTE PROCEDURE
29.	EXHIBITION OF AGREEMENT.....
30.	INDUSTRY PROTECTION FUND.....
31.	FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION
32.	ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING.....
33.	PRODUCTIVITY(ANNEXURE B)
34.	HIV/AIDS (ANNEXURE A).....
35.	CONTRACT EMPLOYEES (ANNEXURE D).....
36.	WORKING IN ARRANGEMENTS

2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

3. DEFINITIONS

Any expressions used in this part of the Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in the Act, any reference to an Act shall include any amendment of such Act, and unless the contrary appears, words importing the masculine gender shall include the feminine and the singular shall include the plural and vice versa; further, unless inconsistent with the context-

"**Act**" means the Labour Relations Act, 1995 (Act No. 66 of 1995), as amended.

"**agency shop**" means the compulsory payment of a monthly levy by non-party employers, calculated in terms of clause 26 (3);

"**boiler attendant**" means an employee who, under general supervision, maintains the water level and steam pressure of a boiler and who may make, maintain or draw the fire in such boiler, and who removes ashes;

"**casual employee**" means an employee who is employed by the same employer on not more than three days in any week and for not more than eight weeks in any year;

"colouring mass-measurer" means an employee who, under the supervision of a dyer, is responsible for the mass-measuring of dyestuffs and chemical byproducts;

"complying employer" means an employer which is registered with the Council and which has registered all permanent and contract employees with the Council, and which has given effect to all collective agreements of the Council which are applicable to it in each of its establishments, or which has received exemption from any collective agreement to the extent of such exemption;

"continuous service" means, without restricting the ordinary meaning of the phrase, all periods of employment with the same employer and includes any kind of leave due in law or agreed to between an employee and his employer: Provided that any periods of employment with the same employer interrupted by a period of unemployment resulting from retrenchment of less than one year shall be deemed continuous;

"Council" means the National Bargaining Council for the Clothing Manufacturing Industry registered in terms of section 29 of the Labour Relations Act, 1995;

"cutter or shaper" means an employee who is engaged in cutting fronts, backs and/or sleeves of a fully-fashioned garment and/or trimmings, and marking and/or cutting attachments, points of necks and/or armholes and/or trimmings and who may use a template for this purpose;

"despatch clerk" means an employee who is responsible for the despatch or the packing of goods for transport or delivery and who may supervise the assembling, checking, mass-measuring, packing, marking, addressing or despatching of such goods or packages;

"despatch packer" means an employee who, under the supervision of a despatch clerk, is engaged in packing, assembling, marking, addressing and mass-measuring goods for despatch or delivery;

"driver of a motor vehicle" means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, the expression 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;

"dyer" means an employee who is responsible for and engaged in dyeing and/or other finishing processes and who decides on the nature, mass blending and application of the dyes or other chemicals to be used;

"dyer's assistant" means an employee who, under the supervision of a dyer, is responsible for the mixing of colours and/or formulae and who may attend or operate the machines used in the dyeing and finishing processes;

"employee" includes all those employees who fall within the jurisdiction of the Council;

"employee not elsewhere specified" means any person who is employed in the Knitting Industry for whom wages are not specified in clause 4 (1)(a) (i)-(xvii), but excludes any person who works in an office;

"employer" means any person who employs or provides work for any person who is employed within the Knitting Industry;

"experience" means the total period or periods of employment which an employee has had in his class of work in the Knitting Industry or similar work in the Clothing and Textile Industries and allied industries;

"factory clerk" means an employee who is engaged in any one or more of the following duties:

- (a) Checking attendance records or recording particulars of employees at work or absent from work, collating time cards and/or envelopes;
- (b) checking or recording production control; and
- (c) recording particulars of waste;

"fixed-term contract employee" means an employee who is employed on a full-time basis for a predetermined fixed period or until the completion of a specific short-term task;

"floorwalker/runner" means an employee who is engaged in carrying garments or parts of garments from one place to another within the workplace;

"foreman or forewoman" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to his care in the workplace or a department of the workplace;

"fully-fashioned garments" means garments whose form or body, or body and sleeves, or sleeves and back and front are fully shaped on a knitting machine;

"general worker" means an employee who is engaged in one or more of the following activities:

- (a) Carrying, moving, stacking or unpacking goods or other articles;
- (b) cleaning or washing premises;
- (c) cutting up or otherwise destroying rejected hosiery or fabrics;
- (d) gardening work;
- (e) lime-washing or colour-washing buildings, or other structures;
- (f) loading or unloading;
- (g) making or maintaining fires, or removing refuse or ashes; and
- (h) opening or closing or unpacking or strapping cartons, boxes, bags and other containers;

"half-year" means the six-monthly periods commencing on the first day of January and/or July;

"handyman" means an employee, other than a knitting machine operator, mechanic or mechanic's assistant, who is engaged in making minor repairs and adjustments to machinery, plant, building and other equipment;

"head warper" means an employee who exercises control and supervision over two or more warpers;

"hourly wage" means, in the case of an employee, the weekly wage, divided by the number of ordinary hours of work per week prescribed for an employee of his class;

"Knitting Industry" or "Industry" means, without in any way limiting the ordinary meaning of the term, the industry in which employers and their employees are associated for the purpose of manufacturing hosiery and fully-fashioned garments and/or any part thereof by means of a knitting process and includes the marking-in or cutting of such garments and/or all succeeding processes or operations performed in connection therewith but excludes:

- (i) the marking-in or cutting of, and all succeeding processes or operations performed in

connection with, all classes of garments other than fully-fashioned garments;

- (ii) the manufacture of any article of wearing apparel by any employer from knitted fabrics not manufactured by himself; and
- (iii) the manufacture by any employer or trimmings for use by such employer in the making of any wearing apparel from fabrics not produced by himself;

"knitting machine operator" means an employee who is engaged in changing needles, sliders and sinkers, straightening tricks, including chain and card control, and running on after press-offs, but excludes the resetting of the machine and pattern changing;

"level B compliance" refers to the status of non-compliant employers who bring themselves within the provisions of clause 28(8). For so long as such employers abide by all the conditions set out therein, no writs of execution in respect of non-compliance will be enforced against them, and they will be entitled to Level B Compliance Certificates from the Council;

"linker" means an employee who is engaged in operating a linking machine used for the purpose of toe-closing in osiery and/or joining parts of a fully-fashioned garment and/or attaching trimmings to a fully-fashioned garment or parts of a garment;

"mechanic" means an employee who is engaged in the operation, maintenance, rebuilding and refitting of knitting machines and other machines used in the Knitting Industry and who is also proficient in pattern designing and making;

"mechanic's assistant" means an employee who, in addition to performing the duties of a knitting machine operator, is engaged in the resetting of machines, including pattern drum, pattern wheel and jacquard set-outs, and, under the supervision of a mechanic, carrying out minor repairs and generally stripping and assembling machines;

"medical practitioner" means a person entitled to practise as a medical practitioner in terms of the Medical Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

"mender" means an employee who is engaged in repairing knitting faults in fabric, garments, blanks and/or hosiery;

"night work" means work performed after 18:00 and before 06:00 the next day;

"normal shift worker" means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

"old age" means 60 years of age;

"operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer;

"ordinary hours of work" means 42½ hours per week of five days and in respect of a watchman, 45 hours in any one week;

"overtime" means the time that an employee works during a day or a week in excess of the ordinary hours of work;

"parcel maker" means an employee who is engaged in closing and/or sealing parcels and cartons prior to despatch and delivery;

"part-time driver of a motor vehicle" means an employee who is ordinarily engaged on duties other than driving a motor vehicle but who, on more than two days in any week, is engaged in driving a motor vehicle for not more than three hours in the aggregate of any such

day, and for the purposes of this definition, the expression driving a motor vehicle includes all periods of driving and any time spent by the driver while in charge of the vehicle, on work in connection with the vehicle or the load;

"plain sewer" means an employee who performs one or more of the following operations by hand:

Fastening edge-stays and odds and ends of sewing; sewing on buttons; hand knitting and/or hand crocheting; and all hand sewing not elsewhere specified;

"pre- or post-boarder or former" means an employee who is engaged in placing hosiery and/or garments on forms and subsequently removing them;

"qualified employee" means, in the case of an employee referred to in clause 4 (1) (a) (ii), (iv) and (v), an employee who has had **not less than four (4) years and ten (10) months** experience; in the case of an employee referred to in clause 4 (1) (a) (ix), an employee who has had **not less than two (2) years and ten (10) months** experience; in the case of an employee referred to in clause 4 (1) (a)(iii), (viii), (x) and (xiv), an employee who has had **not less than one (1) year and ten (10) months experience**; and in the case of an employee referred to in clause 4(1) (a) (xvii), an employee who has had **not less than one (1) year and six (6) months** experience;

"Regional Chamber" for the purposes of this part of the Agreement, means the Northern Chamber [formerly the Knitting Industry Bargaining Council (Northern Areas)] of the Council;

"seamer" means an employee who is engaged in joining seams in hosiery by means of a seaming machine;

"security officer" means an employee who is in charge of staff engaged in guarding the safety of premises and/or the property of the workplace, and who may be in charge of searching staff and who carries out such security work as may be assigned to him by the management;

"set leader" or "team leader" means an employee who is in a set or team and who is generally responsible for the work executed by the employees comprising such set or team;

"sewing machinist" means an employee who is engaged in operating a sewing machine using a needle and thread;

"short time" means a temporary reduction in the number of ordinary hours of work owing to slackness of trade or shortage of raw materials;

"sorter and/or grader" means an employee who is engaged in sorting and/or grading hosiery into pairs according to length and size and/or sorting trimmings, materials and/or parts of fully-fashioned garments;

"storeman" means an employee who is in general charge of stocks of incoming goods or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or warehouse or delivering goods from a store or warehouse to the consuming departments in the workplace or for despatch;

"store clerk" means an employee who is employed in the store or warehouse of the workplace under the general supervision of a storeman and who is engaged in the general handling of goods in the workplace, but does not include a general worker;

"supervisor" means an employee who, under the supervision of a foreman and/or manager, is in charge of a group of employees;

"trade union representative" means a member of a trade union who is elected to represent employees in a workplace;

"trainee" means, in the case of an employee referred to in clause 4(1) (a) (ii), (iv) and (v), an employee who has had **less than four (4) years and ten (10) months** experience; in the case of an employee referred to in clause 4 (1) (a)(ix), an employee who has had **less than two (2) years and ten (10) months** experience; in the case of an employee referred to in

clause 4 (1) (a) (iii), (viii), (x) and (xiv), an employee who has **had less than one (1) year and ten (10) months** experience; and in the case of an employee referred to in clause 4 (1) (a) (xvii), an employee who has **had less than one (1) year and six (6) months** experience;

"traveller's assistant" means an employee who, under the supervision of a traveller, is engaged in such tasks as may facilitate the execution of the work of the traveller, but does not include the driving of a motor vehicle;

"twilight shift" means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

"twilight shift worker" means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

"union with the majority membership in the workplace" means any trade union of which more than 50 per cent of the employees in the workplace are members;

"unladen mass" means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue licences in respect of motor vehicles: Provided that in the case of a two or three-wheeled motor cycle, motor scooter or autocycle or cycle fitted with an auxiliary engine, the unladen mass shall be deemed not to exceed 453,5 kg;

"wage" means the amount of money payable to an employee in terms of clause 4 (1) in respect of his ordinary hours of work as specified in clause 6: Provided that if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that specified in clause 4 (1), it means such higher amount;

"warp knitting machine operator" means an employee who operates one or a set of warp knitting machines, and who is capable of correcting faults, changing and/or straightening needles, filling bars, and making minor adjustments, and includes a threader and needle fixer;

"warper" means an employee who prepares warps from cones or bobbins for a warp knitting or similar machine and who prepares the beam;

"watchman" means an employee who is engaged in guarding premises or other property;

"winder" means an employee who is engaged in operating a yarn-winding machine;

"working day" means any day on which work is usually performed in the Knitting Industry;

"workplace" means the place or places where the employees of an employer work; and if an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where employees work in connection with each independent operation constitutes the workplace for that operation;

"yarn changer/pig tailor" means an employee who is responsible for loading and unloading the yarn on knitting machines, or an employee who brings yarn to and from the machines, removes fabric and cleans the machines, and who may stop the machine to change the yarn and restart the machine only if it was stopped for the purpose of changing the yarn and who shall not carry out any other functions of the knitting machine operator.

4. REMUNERATION

- (1) (a) An employer shall, subject to the provisions of subclauses (1) (b), (c) and (d), (4), (6), (7) and (8), pay to each of his employees, from the date of coming into operation of this part of the Agreement, not less than the weekly wage prescribed for an employee of his class as set out below:

Provided that-

- (i) any trainee who, immediately prior to the date of coming into operation of this part of the Agreement, was in receipt of a wage higher than that then

payable to an employee of his class shall, on the first pay day following the date of coming into operation of this part of the Agreement and on each subsequent pay day, be paid as a weekly wage the next higher wage prescribed for an employee of his class; and any such increase granted to a trainee on such dates shall not affect the actual experience of such trainee for the purpose of granting further increases;

- (ii) the wage of an employee other than a trainee who, immediately prior to the date of coming into operation of this part of the Agreement, was in receipt of a wage higher than that then payable to an employee of his class shall be increased with effect from the first pay day following the date of coming into operation of this part of the Agreement by an amount equal to the increase which an employee of his class would receive if he earned the prescribed wage, as from the said date;
- (iii) an employee, other than a trainee, in receipt of a wage higher than that prescribed for an employee of his class, who was employed for a period of 13 weeks or more prior to the incremental date, shall be entitled to the prescribed increase, notwithstanding the provisions of clause 4 (1)(b):

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
(i)	Foreman:	1667.80	1334.20	1675.50	1340.40
(ii)	Dyer: (See (iv) below)				
(iii)	Storeman:				
	(i) Qualified:	1605.40	1284.30	1612.80	1290.20
	(ii) Learners:				
	first six months of experience	579.60	463.70	582.30	465.80
	second six months of experience	836.10	668.90	839.90	671.90
	third six months of experience	1092.50	874.00	1097.60	878.10
	next four months of experience	1349.00	1079.20	1355.20	1084.20
	Thereafter, the wage specified in (iii)(i) i.e.	1605.40	1284.30	1612.80	1290.20
(iv)	Mechanic/Dyer:				
	(i) Qualified:	1667.80	1334.20	1675.50	1340.40
	(ii) Learners:				
	first six months of experience	579.60	463.70	582.30	465.80
	second six months of experience	688.30	550.60	691.40	553.10
	third six months of experience	797.20	637.80	800.80	640.60
	fourth six months of experience	906.00	724.80	910.10	728.10
	fifth six months of experience	1014.90	811.90	1019.60	815.70
	sixth six months of experience	1123.40	898.70	1128.70	903.00
	seventh six months of experience	1232.50	986.00	1238.20	990.60
	eighth six months of experience	1341.20	1073.00	1347.50	1078.00
	ninth six months of experience	1449.90	1159.90	1456.50	1165.20
	next four months of experience	1559.30	1247.40	1566.50	1253.20
	Thereafter, the wage specified in (iv)(i) i.e.	1667.80	1334.20	1675.50	1340.40

E - 9

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
(v)	Mechanic's Assistant:				
	(i) Qualified:	1092.10	873.70	1097.10	877.70
	(ii) Learners:				
	first six months of experience	579.60	463.70	582.30	465.80
	second six months of experience	630.30	504.20	633.00	506.40
	third six months of experience	670.10	536.10	685.40	548.30
	fourth six months of experience	733.00	586.40	736.40	589.10
	fifth six months of experience	784.60	627.70	788.30	630.60
	sixth six months of experience	836.20	669.00	840.00	672.00
	seventh six months of experience	887.00	709.60	891.30	713.00
	eighth six months of experience	938.60	750.90	942.70	754.20
	ninth six months of experience	989.60	791.70	994.10	795.30
	next four months of experience	1041.10	832.90	1045.90	836.70
	Thereafter, the wage specified in (v)(i) i.e.	1092.10	873.70	1097.10	877.70
(vi)	Supervisor:	1154.70	923.80	1160.20	928.20
(vii)	Final Examiner of fully-fashioned garments:	1072.10	857.70	1077.20	861.80
(viii)	Factory Clerk, Despatch Clerk, Stores Clerk:				
	(i) Qualified	1049.90	839.90	1054.90	843.90
	(ii) Learners:				
	first six months of experience	579.60	463.70	582.30	465.80
	second six months of experience	697.00	557.60	700.20	560.20
	third six months of experience	814.60	651.70	818.30	654.60
	next four months of experience	932.40	745.90	936.80	749.40
	Thereafter, the wage specified in (viii)(i) i.e.	1049.90	839.90	1054.90	843.90
(ix)	Knitting Machine Operator, Warp Knitting Machine Operator, Dyer's Assistant, Colouring Mass-Measurer and/or Cutter or Shaper of fully-fashioned garments, Handyman and Warper:				
	(i) Qualified:	1049.90	839.90	1054.90	843.90
	(ii) Learners:				
	first six months of experience	579.60	463.70	582.30	465.80
	second six months of experience	657.80	526.20	660.60	528.50
	third six months of experience	736.00	588.80	739.30	591.40
	fourth six months of experience	814.60	651.70	818.30	654.60
	fifth six months of experience	892.90	714.30	897.20	717.80
	next four months of experience	971.40	777.10	975.90	780.70
	Thereafter, the wage specified in (ix)(i) i.e.	1049.90	839.90	1054.90	843.90
(x) (a)	Loader of magazine or comb, Linker, Overlocker other than an overlocker of seconds in socks, Mender and Plain Sewer:				
	(i) Qualified:	916.00	732.80	920.30	736.20

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	(ii) Learners:				
	first six months of experience	579.60	463.70	582.30	465.80
	second six months of experience	663.30	530.60	666.40	533.10
	third six months of experience	747.50	598.00	751.00	600.80
	next four months of experience	832.00	665.60	835.80	668.60
	Thereafter, the wage specified in (x)(i) i.e.	916.00	732.80	920.30	736.20
(x) (b)	Sewing Machinist including a button, buttonhole and hemming machinist:				
	(i) Qualified:	916.00	732.80	920.30	736.20
	(ii) Learners:				
	first six months of experience	579.60	463.70	582.30	465.80
	second six months of experience	663.30	530.60	666.40	533.10
	third six months of experience	747.50	598.00	751.00	600.80
	Thereafter, the wage specified in (x)(i) i.e.	916.00	732.80	920.30	736.20
(xi)	Driver of a Motor Vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle—:				
	(a) does not exceed 453,5 kg	875.70	700.60	879.70	703.80
	(b) exceeds 453,5 kg but not 2 721 kg	1034.00	827.20	1038.70	831.00
	(c) exceeds 2 721 kg but not 4 535 kg	1101.00	880.80	1106.20	885.00
	(d) exceeds 4 535 kg	1194.90	955.90	1200.60	960.50
(xii)	Security Officer:	1337.70	1070.20	1343.80	1075.00
(xiii)	Watchman:	1032.10	825.70	1036.90	829.50
(xiv)	Employee not elsewhere specified:				
	(i) Qualified:	1074.70	859.80	1079.60	863.70
	(ii) Learners:				
	first six months of experience	579.60	463.70	582.30	465.80
	second six months of experience	703.20	562.60	706.40	565.10
	third six months of experience	827.10	661.70	831.00	664.80
	next four months of experience	950.70	760.60	955.20	764.20
	Thereafter, the wage specified in (xiv)(i) i.e.	1074.70	859.80	1079.60	863.70

E -11

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
(xv)	Seamer, Mender of socks, Sorter, Cleaner (i.e. an employee engaged in cleaning garments and/or fabrics), Grader, Sampler (i.e. an employee engaged in the making up of sample cards), Winder, Overlocker for seconds in socks and/or Examiner of knitted fabrics and articles, Backwinder, Drawthreader, Pre-and Post-boarder or Former, Precutter, Presser, Turner, Operator of calender, slitting, setting or steaming machine, Operator of brushing, raising and/or cropping machine, Operator of dye machine, Operator of drying and/or hydro-extracting machine, employee engaged in Transferring and/or Labelling, Trimming off surplus threads, Folding, Carding and/or Packing, Waxring Maker, Boiler Attendant, Creeler, Teamaker, Despatch Packer, Parcel Maker, General Worker and Floor Walker/Runner:	874.70	699.80	878.70	703.00
(xvi)	General Worker/Traveller's Assistant, Cloakroom Supervisor and/or Attendant, Teamaker employed after 30-06-1987:	752.90	602.30	756.40	605.10
(xvii)	All employees classified in (xv) and who were employed after 30-06-1987, other than general worker, traveller's assistant, cloakroom supervisor and/or attendant and teamaker:				
	(i) Qualified:	752.90	602.30	756.40	605.10
	(ii) Learners:				
	first six months of experience	579.60	463.70	582.30	465.80
	second six months of experience	637.00	509.60	640.10	512.10
	third six months of experience	695.40	556.30	698.50	558.80
	Thereafter, the wage specified in (xvii) (i) i.e.	752.90	602.30	756.40	605.10
NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by 6.33% Across-the-Board.					

- (b) **Incremental dates:** An employer shall pay the increase due to each of his trainee employees on the basis of the experience of each of his trainee employees on the first pay day in the month of January and again on the first pay day in July of each year. For the purpose of computing a trainee employee's experience, employment for 16 weeks in any half-year shall be deemed to have been in employment for the whole half-year: Provided that a trainee employee in his first half-year of employment who has less than 16 weeks' experience but more than 13 weeks' experience on the last day of the half-year shall be deemed to have been in employment for the whole half-year.

- (c) **Set or team leader or head warper:** Any employee who is called upon to perform the duties of a set or team leader or head warper shall be paid, in addition to the wage prescribed in paragraph (a) for a qualified employee of his class, an additional 10 per cent of such wage for an employee of his class.
- (d) **Traveller's assistant:** A traveller's assistant shall, in addition to his ordinary wage, be paid a subsistence allowance of R3,00 for each day away from the workplace, plus a further allowance of R6,00 for each night he is away from his home town; and, in addition, the employer shall be responsible for the payment of accommodation expenses for each night he is away from home.

(2) **New Employees**

2.1 New employees shall be paid a weekly wage of 70% of the rate in metro areas, subject to the following provisions:

2.1.1 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a period of 3 years.

2.1.2 The provision is only applicable to compliant companies.

2.1.3(a) The new entry-level wage provision will continue in force and effect as an industry-wide provision after the 31st August 2014 if there has been an increase in employee strength of compliant employers in the industry of at least 15% as at 31st March 2014, monitored on a bi-annual basis.

2.1.3(b) The bi-annual benchmark monitoring shall be measured against the following schedule of new employment growth:

1 March 2012:	3% increase
1 September 2012:	6% increase
1 March 2013:	9% increase
1 September 2013:	12% increase
1 March 2014:	15% increase

2.1.4 It is only applicable to those compliant companies who were in existence and operational as at 1 June 2011.

2.1.5 All other provisions of the main agreement shall be applicable to new employees.

2.1.6 The closed shop shall be applicable to all new employees.

2.1.7(a) The employee strength to determine whether or not there has been an increase in employee strength will be measured by comparing the employee strength of compliant employers whose businesses are registered with the bargaining council on the 1st June 2011, as per clause 2.1.3, and to that of the employee strength of compliant employers whose businesses are registered with the bargaining council on the 31st March 2014, i.e. a period of 30 months following the implementation of this Agreement.

(b) In the event that the employee strength does not increase as per the provisions of this Agreement and more specifically, the provisions of Clause 2.1.3 above, the provisions of the new-entry wage provision will terminate.

- (c) Upon such termination of the application of the new entry level wage provision, the wages of all employees earning the new-entry wage will be increased to the full applicable gazetted wage for all job categories from the first pay week following the 31st August 2014, unless the parties during the 2014/2015 round of annual or other negotiations agree otherwise or agree to an alternative to address any further job losses or the absence of job growth in the industry.
- 2.1.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to employ employees at the rates specified in sub-clause 2.1.3 (a) above.
- 2.1.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 2.1.10 Qualified employees shall be employed at the qualified new entry rate, subject to sub-clause 2.1.1.
- 2.1.11 Effective 1st September 2011, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.
- (3) **Incentivised Wage Rates**

The 'new entry wage rates' provisions as specified in clause 4 of the 2011/2012 party-to-party substantive agreement shall be abolished and replaced with the following incentivised wage rates provisions, applicable to new employees only:

- 3.1 With effect 1 September 2013, new employees shall be paid a guaranteed wage of no less than 80% of the normal qualified gazetted wage rate applicable to current employees, subject to the following provisions:
- 3.2 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a minimum period of 3 years, unless the applicant employee agrees otherwise with his/her prospective employer.
- 3.3 The guaranteed wage rate as specified in sub-clause 3.1 above shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the qualified rate, provided the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1 September 2012, once a national framework agreement governing the incentive portion has been agreed
- 3.4 The provisions of clause 3 of this circular is only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa
- 3.5 All other provisions of the industry's Main Agreement shall be applicable to new employees.
- 3.6 The closed shop shall be applicable to all new employees.

- 3.7 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to re-employ employees at the rates specified in sub-clause 3.1 above
- 3.8 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 3.9 Qualified employees shall be employed at the qualified rate, subject to sub-clause 3.2 above.
- 3.10 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party to party agreement, which was subsequently extended to non-parties and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus the annual increases, and subject to the companies at which they are employed meeting the compliant employment growth targets as set out in the 2011/2012 wage agreement.
- 3.11 Effective 1st September 2012, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.
- 3.12 The parties shall negotiate a national framework agreement at national bargaining council level, to give enabling effect to the plant level incentivised wage component as contemplated in sub-clause 3.3 of this agreement. This shall be finalised within a period of 4 months with effect from 1 October 2012 (excluding the annual shutdown period). Thereafter, companies who qualify for the provisions of clause 4 of the substantive agreement and who wish to implement it shall have a 2 month period to conclude plant-level incentive arrangements in terms of the provisions of the national framework agreement.
- 3.13 The deadlock breaking mechanism for the national framework agreement is either binding interest arbitration or, at the end of the prescribed period, the entire 80% dispensation falls away, unless other forms of deadlock breaking mechanisms are agreed between the parties.
- 3.14 Should the 80% dispensation fall away in consequence of the provision in sub-clause 3.13 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreement rate.
- 3.15 The deadlock breaking mechanism for operationalising the incentive component at plant level shall consist firstly of a facilitation process by a panel of experts jointly appointed by the employer and trade union parties to this agreement and if not resolved, by an advisory award by the panel, unless other forms of deadlock breaking mechanisms are agreed to between the parties.
- 3.16 The parties agree that the only outstanding issue pertaining to the national incentivised framework agreement is the deadlock breaking mechanism. The Parties agree to finalise this matter within two (2) weeks from the date of signing this agreement, failing which the provision of sub-clause 3.13 above will become effective.

- (4) **Differential rates of pay:**
- (a) **Temporary work:** An employer who requires or permits an employee of one class to perform for longer than one hour in the aggregate on any day, either in addition to his own work or in substitution therefor, work of another class for which a higher wage for a qualified employee than that of his own class is prescribed in subclause (1), shall pay such an employee in respect of that day not less than the daily wage calculated at the higher rate as if such employee had the period of experience in the class for which the higher rate is prescribed.
 - (b) **Transfer:** An employer shall inform the Regional Chamber within 14 days of transferring an employee from one class of work to another by completing a transfer form in the form and manner specified by the Council or Regional Chamber.
 - (c) **Night shift remuneration:** In addition to the remuneration prescribed for an employee of his class in subclause (1) (a), an employee shall in respect of each night shift worked in any week, be paid an additional 12,5 per cent of such employee's daily wage in respect of any time worked, other than overtime, falling outside of the ordinary hours worked in the workplace in which he is employed.
- (5) **Calculation of wages:** The daily wage of an employee, other than a casual employee, shall be his weekly wage, divided by five, and his hourly wage shall be his weekly wage, divided by the number of ordinary hours of work per week prescribed for an employee of his class.
- (6) **Reduction of wages:** Nothing in the Agreement shall operate to reduce the wage paid to an employee prior to the date of coming into operation of this part of the Agreement if that wage was higher than the wage prescribed in the Agreement for that class of employee.
- (7) **Casual employee:** A casual employee shall be paid in respect of everyday or part of a day of employment not less than one-fifth of the weekly 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 "weekly wage" shall mean the weekly wage prescribed for a qualified employee of that class: Provided further that where the employer requires a casual employee to work for a period of not more than four consecutive hours on any day, his wage may be reduced by not more than 50 per cent of his daily wage.
- (8) (a) **Attendance bonuses:** In any workplace where attendance bonuses are regularly paid, no deduction or nullification of such bonuses shall be effected for absenteeism of two days' or less duration owing to the death of an employee's child, spouse or parent: Provided that the employer may require the employee concerned to produce the death certificate of the deceased.
- (b) **Bonus schemes:** Any employer who introduces an incentive and/or attendance bonus scheme or who already has such a scheme in operation shall within 30 days after introducing such scheme or within 30 days after the coming into operation of this part of the Agreement, submit to the Regional Secretary of the Regional Chamber full details of such scheme and shall similarly within 30 days after effecting any alterations to such scheme submit full details of such alterations to the Regional Secretary of the Regional Chamber. An employee employed on incentive bonus work shall be paid in any week not less than the wages to which he would have been entitled had he been employed on the basis of time worked, and the rate and/or amount of incentive bonus paid to such employee before the dates on which wage increases are due in terms of this part of the Agreement shall not be decreased so as to reduce or nullify the amount of

the wage increase to which an employee of his class is entitled in terms of subclause (1). No bonus scheme may be changed without the consent of the employees.

5. PAYMENT OF AMOUNTS DUE TO EMPLOYEES

- (1) Wages and other amounts due to employees shall be paid weekly in cash, during working hours, on the nominated pay day of a workplace, or may be deposited into the employee's account with a financial institution: Provided that where an employee's services terminate on a day other than a nominated pay day, any amounts due to him shall be paid immediately on such termination: Provided further that when an employee is working short time or the nominated pay day is a holiday, payment in terms of this subclause shall be made before the employee finishes work for the week.

In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.

- (2) No deductions of any description shall be made from amounts due or paid to an employee except as provided below.
- (a) Where an employee is absent from work or arrives late at work, a pro rata amount of the actual time lost may be deducted from his total remuneration: Provided that where the doors of the workplace are locked, thus preventing an employee, other than an employee working a night shift, from entering the premises on arrival at work, the employee shall be paid in full for the whole day.
- (b) Subject to the provisions of clause 21, whenever the ordinary hours of work prescribed in clause 6 are reduced on account of short time, a pro rata deduction from the employee's wage may be made: Provided that no deduction shall be made in the case of short time arising out of slackness of trade or shortage of supplies, unless the employer has made an agreement with the employees as to short time working and has given notice to such employees and to the Regional Chamber of his intention to reduce ordinary hours of work.
- (c) If, owing to the stoppage of machinery, no work is available for an employee, deductions may be made by the employer from the wages of such employee only for time lost in excess of two hours.
- (d) An employee shall, at the written request of any of his employees, make deductions weekly from the employee's remuneration of any amount or amounts of subscription, specified in the said written request, to the funds of the trade union party to the Agreement, and shall forward the amount or amounts so deducted to the Regional Secretary of the Regional Chamber not later than the 10th day of each month immediately succeeding the month during which such deductions were made.
- This paragraph shall apply in respect of clerical employees, notwithstanding that no wages are prescribed in this part of the Agreement for such employees.
- (e) With the consent of the employee, deductions may be made for insurance, death benefits, pension and/or provident funds: Provided that such funds shall be approved by the Council or Regional Chamber and that no deduction shall be made unless this subclause which has the effect of circumventing paragraph (d) above.

E -17

- (f) Deductions shall be made for contributions to the Council's or Regional Chamber's Funds, Medical Benefit Society, Sick Pay Fund and Provident Fund as provided for in this part of the Agreement, or to any other fund established by this part of the Agreement or any other agreement reached by the Council or Regional Chamber.
 - (g) Any amount which an employer is legally required to deduct from his employee's wage may be deducted.
 - (h) With the written consent of the employee, deductions may be made in respect of amounts owing to the employer in respect of money borrowed or goods purchased by the employees from, the employer: Provided that the amount so deducted shall not exceed one-third of the employee's wage.
 - (i) An employer shall deduct trade, union subscriptions and levies from trade union members on written authorisation other than where an exemption has been granted by the Council or Regional Chamber: Provided such monies have been determined in terms of the union's Constitution. The employer shall forward such amounts so deducted to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, for transmission to the union.
- (3) (a) All cash payments to employees; shall be made in sealed envelopes which shall be retained by the employee.
- (b) Payments in terms of subclause (1) may be made by bank transfer, bank deposit or by cheque.
- (c) Payments shall be accompanied by a payslip with the following information:
- Name of the workplace, name, occupation and number of the employee, the weekly wage, number of hours worked on ordinary time; number of hours, worked on overtime. and/or Sunday, time., . amount earned for the time worked, amount of any bonuses earned, amount of, holiday pay, (if any); details of all deductions made from such amount, the amount contained in the envelope and the week in respect of which wages are paid.
- (4) Particulars of all deductions made shall be entered in the wage register.
- (5) (a) Each employee shall be paid a bonus on the day of his employer's annual closure in December of each year, equivalent to 2,57% of his total annual basic wage calculated from 1 January to 31 December: Provided that a pro rata share of the bonus shall be paid to an employee who leaves employment before the annual closure.
- (b) The bonus shall be inclusive of and not additional to any annual bonus paid by an employer.
- (c) For the purpose of calculating this bonus, absence of any nature may not be taken into consideration.
- (6) An employee, on commencement of maternity leave, shall be entitled to a payment in terms of clause 20 (6) of this part of the Agreement.

6. HOURS OF WORK

- (1) **Ordinary hours of work:** Provided that the status quo prior to the coming into operation of this part of the Agreement remains at a workplace where the normal working hours were less than in the Agreement, an employer shall not require or permit

an employee other than an employee referred to in subclause (5) to work for more than-

- (i) 42½ hours, excluding meal intervals but including rest intervals, in any week from Monday to Friday, inclusive;
 - (ii) nine hours per day in any one week; and
 - (iii) five hours without a meal interval.
- (2) **Hours of work to be consecutive:** All working hours in any day shall, except for meal intervals and rest intervals as provided for in this clause, be consecutive.
- (3) **Rest intervals:** An employer shall grant to each of his employees a rest interval of not less than 10 minutes as near as practicable to-
- (a) the middle of each morning work period; and
 - (b) the middle of each afternoon work period;
- during which such employee shall not be required or permitted to perform any work, and such interval shall be deemed to be part of the ordinary hours of work.
- (4) **Meal intervals:** An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than one hour, during which interval such employee shall not be required or permitted to perform any work: Provided that-
- (a) periods of work interrupted by intervals of less than one hour shall be deemed to be continuous; and
 - (b) here normal shifts are worked in any workplace, a normal shift worker shall be granted one interval of not less than 30 minutes per normal shift, during which interval such employee shall not be required or permitted to perform any work.
- (5) **Exclusions:** The provisions of this clause shall not apply to a watchman: Provided that the watchman shall not be required to work-
- (a) for more than 45 hours per week; or
 - (b) for more than six days in any one week; or
 - (c) for more than 12 hours in any one day/shift:

Provided further that the employer may require his watchman to work on the seventh day of the week and pay the watchman in addition to his weekly wage, an amount equal to two-sixths of such weekly wage in respect of work done on such seventh day.

(6) **Twilight Shift**

- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:
 - (i) Only unemployed people may be recruited for working this shift.
 - (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.

- (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
 - (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
 - (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
 - (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.
- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:
 - (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
 - (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

7. OVERTIME AND SUNDAY WORK

- (1) Payment of overtime worked shall be made at the rate of one and a half times the hourly wage for each hour or part of an hour so worked from Monday to Saturday.
- (2) An employer shall pay an, employee who works on. a Sunday double the employee's rate of pay for the number of hours worked.
- (3) No employer shall require or permit an employee to work overtime for more than 12½ hours per week.
- (4) No employee shall be required to work overtime without his consent.
- (5) No employee shall be dismissed from or prejudiced in his employment by reason of his refusal to work overtime.
- (6) Every employee who is required to work overtime of one and a half hours or more shall be paid an allowance of R5,00 to enable the employee to obtain a meal before the overtime is due to commence, unless the employer has notified the employee thereof not less than 24 hours before the overtime commences.
- (7) Exclusions: The provisions of subclauses (2) (b), (3) and (4) shall not apply to a watchman.
- (8) **Aggregation of Overtime**

For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 6 of this part of the Agreement may be

reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
 - (ii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
 - (iii) time not worked as a result of the employer having declared short time;
 - (iv) time not worked as a result of the employee being on authorised shop steward stewards time off; and
 - (v) the three days family responsibility leave provided for in clause 6 of this part of the Agreement.
- (9) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

8. ANNUAL LEAVE AND PAID HOLIDAYS

- (1) Every employer shall, subject to the provisions of subclause (2), in the month of December of each year, and not later than the 24th day of the month, grant to each of his employees who have been in his employ from any date prior to the first day of February of the same year, and whose services have not been terminated before 1 December, 15 working days' holiday on full pay: Provided that an employee who, during any year, has been absent from work for a continuous period of more than six months on confinement, or for 12 weeks or more, shall be paid holiday pay in terms of subclause (2). No such employee shall be paid less than three weeks' wages as annual leave pay. The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of the employee before commencement of the period of holiday leave.
- (2) Any employee-
- (a) who commenced work with an employer on or after 1 February in any year; or
 - (b) whose employment terminated before 1 December of that year shall, if his contract of employment with the same employer endured for a period of not less than four weeks in that year, in the case of an employee referred to in paragraph (a), be paid as holiday pay for that period of employment an amount equal to five per cent of the aggregate of the wages received by him in respect of such period of employment and, in the case of an employee referred to in paragraph (b), be paid in lieu of holiday leave for that period of employment, an amount equal to five per cent of the aggregate of the wages received by him in respect of such period of employment. The holiday pay due in terms of this subclause shall be paid by the employer not later than the last working day of that year and if the employee's employment terminates before that day, on the day he leaves the employer's service.
- (3) In computing the amount upon which the five per cent holiday pay is to be calculated in terms of subclause (2), the amount which would have been payable to an employee had he not been absent from work shall be deemed to be amounts actually received by him if such absence is-
- (a) on the instructions or at the request of the employer;
 - (b) because of sick leave, provided a medical certificate for the period or periods of absence has been produced; or

E -21

- (c) because of maternity leave, provided a medical certificate to this effect has been produced.
- (4) Every employer shall grant to each of his employees as paid holidays: New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill and no employer shall employ an employee and no employee shall work on these 12 days and, in addition, each employer shall grant to all his employees who have worked the morning period of the Thursday, preceding Good Friday, time off from the commencement of the normal meal time until the normal closing time and such time lost shall be regarded as time worked: Provided that where an employee is absent on the employer's instructions, he shall be entitled to payment for the Thursday afternoon period preceding Good Friday.
- Provided further that if an employee has to work on any public holiday, such employee will be remunerated at time-and-a-half the ordinary hourly rate for the time so worked, in addition to the entitlement of the day's pay.
- (5) In the event of an employer closing his workplace in terms of subclause (1) for a period which includes the Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's Day, such employer shall pay a full day's pay in respect of each such day to each of his employees in his employ on the day before the date he so closes his workplace. Payment for such days shall also be made to an employee whose contract of service is terminated by the employer on or after the 15th day of November but before the date he closes his workplace: Provided that the employee concerned has been in the continuous employ of his employer for a period of not less than six months immediately prior to the 15th day of November: Provided further that the contract is not terminated by the employee concerned or that he is not summarily dismissed for any cause recognised by law as sufficient.
- The provisions of this subclause shall not apply to cases where the reason for the employer's closing his factory is his Intention forthwith to discontinue business in the Industry. For the purposes of this subclause, the expression "employment" shall have the same meaning as in subclause (1).
- (6) In the event of New Year's Day, Human Rights Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day or Day of Goodwill falling on a Saturday or a Sunday, the employer shall, subject to subclause (5) of this clause, pay to each of his employees an extra day's pay on the first pay day after such day or when payment for these days is payable in terms of this clause, or alternatively shall grant the Monday following such public holiday as a holiday and shall pay a day's pay to each of his employees in respect thereof.
- (7) For the purposes of this clause, "day's pay" means the weekly wage divided by five, and "full pay" means the wage paid immediately prior to the commencement of the holiday leave prescribed in subclause (1).
- (8) Notwithstanding the provisions of subclause (4), an employer may close his workplace on any other three days with the consent of the majority of his employees, and in that event shall not be obliged to pay wages in respect of such days; Provided that he afford his employees the opportunity of working in the time lost in respect of any such days, on any day other than a Sunday, at ordinary rates of pay, should the majority of his employees agree: Provided further that the employer notify his employees of his intention to close the workplace on such days by means of a notice posted in a prominent place in his workplace at least 24 hours prior to the usual starting time of the first day of closure, and that the Regional Chamber be notified thereof in writing.
- (9) (a) An employee shall be entitled to six consecutive months' unpaid maternity leave.
- (b) An employee may commence maternity leave-

- (i) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
 - (ii) 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.
 - (c) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
 - (d) 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.
 - (e) An employee shall notify an employer, in writing, unless the employee is unable to do so, of the date on which the employee intends to-
 - (i) commence maternity leave; and
 - (ii) return to work after maternity leave.
 - (f) Notification in terms of subclause (9) (e) shall be given-
 - (i) at least four weeks before the employee intends to commence maternity leave; or
 - (ii) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (10) (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.
- (b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer shall offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if-
- (i) the employee is required to perform night work or work that poses a danger to her health or safety or that of her child; and
 - (ii) it is practicable for the employer to do so.
- (11) (a) An employer shall grant an employee who has been in his employment for longer than four months, three days' unpaid family responsibility leave which the employee shall be entitled to take-
- (i) when the employee's child is born;
 - (ii) when the employee's child is sick; and
 - (iii) in the event of the death of-
 - (aa) the employee's spouse or life partner; or
 - (ab) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

E -23

- (b) An employee may take family responsibility leave in respect of the whole of or a part of a day.
 - (c) Before granting an employee family responsibility leave in terms of this subclause, an employer may require reasonable proof of an event contemplated in subclause (a) for which the leave was required.
 - (d) An employee's unused entitlement to leave in terms of this subclause shall lapse at the end of the annual leave cycle in which it accrues.
- (12) Exclusions: The provisions of this clause shall not apply to a watchman: Provided that a watchman shall be granted four weeks' holiday leave on full pay, plus payment of an amount equal to one-quarter of his weekly wage, during each period of 12 months' employment: Provided further that should such watchman's employment be terminated before such leave is granted, he shall be paid in lieu of such leave two and a fifth times his daily wage in respect of each completed month of employment, calculated from the date of commencement of his employment or from the first day after the last 12-month period in respect of which he was granted four weeks' holiday leave, as specified in this subclause.

For the purposes of this subclause, the daily wage of a watchman shall be one-sixth of his weekly wage.

9. TERMINATION OF EMPLOYMENT

- (1) Written notice, in the form and manner specified by the Council or Regional Chamber, of not less than five working days which for the purpose of this clause shall include paid holidays, to take effect from the working day following that on which it is given, shall be given by an employer or an employee to terminate contract of service:
- (a) Provided that this shall not affect-
 - (i) the right of an employer or employee to terminate the contract of service without notice for any cause recognised by law as sufficient;
 - (ii) any agreement between the employer and the employee providing for a longer period of notice than one week:
 - (b) Provided further that-
 - (i) an employer may pay an employee wages for and in lieu of the period of notice specified in this clause or agreed upon in terms of subclause (1) (a) (ii);
 - (ii) an employee who is working short time may terminate his employment without giving notice;
 - (iii) the first 20 working days, in respect of weekly paid employees, or the first 35 days, in respect of monthly paid employees, of the period of employment of an employee by an employer shall (unless otherwise stated in a written agreement) be deemed to be a trial period and such employment may be terminated by either the employer or by the employee at any time within such trial period by giving 24 hours' notice;
 - (iv) monthly paid employees shall give or be given not less than one calendar month's notice, in writing, to take effect from the first day of the month following that in which notice is given.
- (2) (a) In the event of an employer failing to give notice or permitting the employee to work the required notice period, or an employee failing to give notice and to work the required notice period, the employer shall pay or the employee shall forfeit,

subject to the provisions of paragraph (b), an amount equal to the full weekly remuneration which the employee was receiving immediately prior to the date of such termination.

- (b) If an employee leaves without notice or is unaccountably absent, the employer shall send his service card to the Regional Chamber not earlier than the sixth nor later than the 11th day of such absence, together with any wages due, holiday pay and any other moneys due in terms of this part of the Agreement, together with a statement by the employer detailing circumstances surrounding the employee's absence from work and requesting a refund of the amount to be forfeited in terms of paragraph (a).
- (3) Subject to the provisions of subclause (2) (a) and (b), an employee who is discharged or leaves without giving notice during the currency of any period of notice given in terms of subclause (1) shall receive full pay if discharged, or shall forfeit such wages for the unexpired period of such notice if the employee left without giving notice.
- (4) No employer shall terminate the services of any employee by reason of such employee's-
- (a) approaching confinement: Provided that the employee shall return not later than six months after having gone off on confinement;
- (b) absence from work through illness: Provided that a medical certificate for any period of absence of more than two consecutive days, or on more than two occasions during an eight-week period be provided on the employee's return to work;
- (c) absence on leave, the written permission of the employer having been obtained;
- (d) partial disablement through injury on duty.
- (5) Subject to the provisions of subclause (3), the employment of an employee who absents himself from work or is absent from work through illness for a period of five consecutive working days without notifying his employer, in writing, may be terminated by the employer without notice as required in subclause (1): Provided that-
- (i) the employer shall attempt to contact the employee in writing at the last-known address supplied by the employee;
- (ii) the employee be allowed to lodge with his employer a written appeal against his dismissal.
- (6) Whenever an employer terminates the services of an employee in terms of subclause (4), notice of such termination shall be given by notifying the Regional Secretary of the Regional Chamber in writing. Any such notification to the Regional Chamber shall be accompanied by the employee's service card and wages or other amounts due to the employee on such termination, for transmission to the employee on application. The provisions of this subclause shall mutatis mutandis apply to any termination of employment in terms of subclause (1) (i).
- (7) Notwithstanding the provisions of subclauses (4), (5) and (6), no employer shall, in terms of the Act, unfairly terminate the services of an employee. Furthermore, for the purposes of determining the length of an employee's employment with an employer, previous employment with the same employer shall be taken into account if the break between the periods of employment is less than one year.

10. ENGAGEMENT IN EMPLOYMENT

- (1) An employer shall, before engaging an applicant for work, require such applicant to produce a service card issued by the Regional Chamber: Provided that, in the case of persons who have not previously been employed in the Industry in the Northern Areas, a period of seven days may elapse before production of the service card shall be required. The service card shall be in the form and manner specified by the Council or Regional Chamber.
- (2) If, during or on completion of the trial period in terms of clause 9 (1) (b) (iii), the contract of service is confirmed, the employer shall, immediately on such confirmation, enter in the service card the name of his workplace, the occupation of the employee, the date of commencement of employment and the prescribed wage of such employee, and within three days forward the service card to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915.
- (3) Such information as is required by the Regional Chamber shall be taken from the service card as soon as reasonably possible after which the card shall be returned to the employer who shall retain it until the employee leaves his employ, whereupon the employer shall enter on the card the date of termination of employment and the prescribed wage on termination and return the card to the employee. The employee shall thereupon surrender his medical benefit card in exchange for his service card: Provided that if the employee is unable to surrender his medical benefit card the employer shall immediately forward the service card to the Regional Chamber's office, where the employee may make application for the service card.
- (4) The employer shall complete and transmit to the Regional Chamber a record, in the form and manner specified and supplied by the Regional Chamber, of all engagements, terminations, the first or last dates of absences from work for four or more consecutive pay weeks and transfers in occupation of employees in respect of that week: Provided that where in any week no changes have been effected, a "Nil" return shall be submitted.

11. COUNCIL FUNDS

- (1) The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.
- (2)
 - (a) Every employer shall, on the pay day of each week and from the first pay day after this part of the Agreement comes into operation, deduct an amount of 0.21% of each employee's wages per week, calculated at the qualified machinist's rate of pay, up to a maximum of R1.95 per week for whom minimum wages are prescribed in this part of the Agreement: Provided that no deductions shall be made from the wage of an employee who has worked for less than 20 hours in the week in which the deductions fall due.
 - (b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute an amount of 0.23% of each employee's wages per, calculated at the qualified machinist's rate of pay, week up to a maximum of R2,11 per week.
- (3) The employer shall pay the total amounts so deducted, together with his contributions in terms of subclause (1) (b) above, to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, within 10 days of the end of the month in which the deductions fall due.
- (4) Where an employer has failed to deduct contributions from his employees he shall not be permitted to deduct arrear contributions, but shall make good these contributions himself.

- (5) Should any amount due in terms of subclause (1) not be received by the Regional Chamber by the 10th day after the date on which it is payable, the employer shall pay weekly interest on such amount or such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two % per annum: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Regional Chamber, the interest may accrue to the general Funds of the Regional Chamber.

12. EXTRACTS FROM WAGE REGISTERS

Every employer shall, in respect of each calendar month, forward a return in the form and manner specified by the Council or Regional Chamber to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, showing in respect of each employee, the Regional Chamber number, clock number (if any), the weekly amounts deducted in terms of clauses 11, 19, 20, 21 and 22 of this part of the Agreement and the date of engagement (if the employee was engaged during the calendar month to which the return relates), the occupation, and the date of termination (if the employee's services were terminated during the calendar month to which the return relates). This return shall be submitted to the Regional Chamber not later than the 10th day of the month following the calendar month to which the return relates.

13. TRADE UNION LABOUR

A. EMPLOYMENT OF TRADE UNION LABOUR

- (1) No employer who is a member of the employers' organisation shall continue to employ an employee-
- (a) who, while being eligible for membership of the trade union, is not a member of the trade union as at the date of coming into operation of this part of the Agreement; or
 - (b) who does not become a member of the trade union within a period of 90 days from such date.
- (2) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the trade union or employers' organisation, or who have been refused membership of or expelled from the trade union or employers' organisation.
- (3) Every employer shall forward all deductions made from the remuneration of employees in respect of trade union membership fees to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, within seven days of the end of the week in which the deductions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward the amounts to the secretary of the trade union, together with such analyses of the amounts as are received from employers.
- (4) For the purposes of this part of the Agreement no union membership subscriptions
- (a) paid to a political party as an affiliation fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

B. RIGHTS AND ACCESS TO PREMISES

- (1) Any office-bearer or official of a representative trade union shall be entitled to enter the employer's premises in order to recruit members or communicate with members or otherwise serve members' interests.
- (2) A representative trade union shall be entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union shall be entitled to vote at the employer's premises in any election or ballot contemplated in the union's constitution.
- (4) The rights conferred by this clause shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.
- (5) The authorised person or persons shall notify the employer or his representatives of his intention to visit the workplace.
- (6) The trade union shall have reasonable access to facilities at the workplace, including the use of the telephone, notice boards and a venue for trade union representative meetings, where such facilities are available, subject to the following:
 - (a) Such facilities shall be available during the normal working hours of the business and while normal output is maintained, including lunch and tea breaks.
 - (b) The granting of facilities shall be available subject to prior agreement from management, which agreement shall not unreasonably be withheld, and the facilities shall be used for industry related matters. Such industry-related matters shall be defined by the Council or Regional Chamber from time to time.
 - (c) The scale of facilities shall be subject to the individual circumstances of a workplace.
- (7) The trade union shall be entitled to distribute the union newspaper at the workplace.
- (8) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.
- (9) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

C. TRADE UNION REPRESENTATIVES-TIME OFF

- (1) Representatives from the representative trade union shall be granted paid time off on the following basis:
 - (a) Ten days per annum per trade union representative, pooled for each workplace and divided between various trade union representatives at the discretion of the union: Provided that-
 - (i) all such leave shall be subject to the operational requirements of the workplace;
 - (ii) in the case of employers employing five or fewer employees, the union shall give the employer ten days' written notice of the activity for which it seeks time of in terms of this clause;

- (iii) in the case of employers not referred to in paragraph (ii), the union shall give the employer one day's notice of the activity for which it seeks time off in terms of this clause; and
- (iv) all leave granted in terms of this clause shall be used to attend bona fide industry-related trade union activities.

D. MEMBERSHIP FEES

Every employer shall forward all deductions made from the remuneration of employees in respect of trade union membership fees to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, within 10 days of the end of the month in which the deductions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward to the General Secretary of the Trade Union the amounts, together with such analysis of the amounts as are received from the employers.

E. SACTWU EDUCATION BURSARY SCHEME

- (1) For the purposes of establishing a SACTWU Educational Trust, every employer to whom this part of the Agreement applies, shall each week contribute 30 cents for each employee in his workplace. The moneys so paid shall be utilised by the SACTWU Education Bursary Scheme to award bursaries to all employees and their children in the Industry to further their education.
- (2) The total amount per month shall be submitted to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, within 10 days of the month in which the contributions fall due. The Regional Secretary of the Regional Chamber shall within 15 days of receipt forward such contribution to the General Secretary of the Trade Union, together with an analysis of the amounts as received from employers.

F. SACTWU HIV/AIDS PROJECT

- (1) There is hereby a HIV/AIDS Project established, known as the SACTWU HIV/AIDS PROJECT.
- (2) Every employer to whom this part of the Agreement applies shall each week contribute an amount of 45 cents for each employee in his employ to the SACTWU HIV/AIDS Project. The amount shall be submitted to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, within seven days of the end of the week in which the contributions fall due.
- (3) The total amount so collected by the Regional Chamber shall be transferred to the SACTWU Finance Department, P.O. Box 18359, Dalbridge, 4014, on a quarterly basis.

G. TRADE UNION AGENCY SHOP

- (1) **Scope-** Agency fees will apply to employees who –
 - (a) are not members of the trade union party, but are eligible for membership thereof;
 - (b) are not bound by the provisions of the closed shop clause; and
 - (c) fall within the scope of this part of the Agreement.
- (2) **Union membership:** Employees are not compelled to become members of the trade union party.

- (3) **Agency fee deductions:** Every employer to whom this clause applies shall:
- (a) deduct from the wages of an employee an amount equivalent to the union subscription; and
 - (b) pay such monies to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, within seven days of the end of the week in which the contributions fail due.
 - (c) deduct the agency fee from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be -
- (a) paid to a political party as an affiliate fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

14. PROHIBITION OF EMPLOYMENT OF CHILDREN AND FORCED LABOUR

- (1) No person may employ a child-
- (a) who is under 15 years of age; or
 - (b) who is under the minimum school-leaving age in terms of any law, if this is 15 years or older.
- (2) No person may employ a child in employment
- (a) that is inappropriate for a person of that age;
 - (b) that places at risk a child's well-being, education, physical and mental health, or spiritual, moral or social development.
- (3) Subject to the Constitution of the Republic of South Africa, 1996, all forced labour shall be prohibited.
- (4) No person may for his own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subclause (1).
- (5) A person who contravenes subclauses (1) to (4) shall be guilty of an offence.

15. REGISTRATION OF AN EMPLOYER

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of the previous Agreement shall within seven days of the date on which this part of the Agreement becomes binding on him, furnish to the Regional Secretary of the Regional Chamber the particulars set out in the form and manner specified by the Council or Regional Chamber.

- (2) Where an employer carries on business as a partnership, company or close corporation, the particulars set out in the form and manner specified by the Council or Regional Chamber, shall be provided in respect of each partner, director or member of the business, as the case may be.
- (3) When an employer's business undergoes any of the following changes, the employer shall furnish to the Regional Secretary of the Regional Chamber notice of the change, in writing, setting out full particulars of such change within seven days of its taking place:
 - (a) Change of name;
 - (b) change of address;
 - (c) change in the composition of its members or partners or directors;
 - (d) sequestration or liquidation of the business;
 - (e) transfer or abandonment of the business;
 - (f) acquisition of another business which is covered by this part of the Agreement;
 - (g) commencement of any other business covered by this part of the Agreement.

16. EXEMPTIONS

A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
 - (a) The period for which the exemption is sought;
 - (b) the number of employees affected and how many of such employees are members of a registered trade union;
 - (c) the clauses and subclauses of this part of the Agreement from which the exemption is sought;
 - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
 - (e) the demonstrable commercial need of the applicant for the exemption sought.
- (4) (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the

E -31

Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.

- (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been rejected.
 - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
 - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.
 - (e) Subject to the time period for considering the application, referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
 - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
 - (g) If the application has been granted or partially granted, the Exemptions Committee 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 exemption(s) will be valid;
 - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
 - (iv) the full name of the exempt employer or employee(s).
 - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
 - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or

withdraw the application may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.

- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such fee shall be consistent with-
 - (i) the cost incurred for the hearing of the appeal;
 - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall in addition, have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
- (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
- (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
 - (a) There is a demonstrable commercial need for the exemption.
 - (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
 - (c) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted, result in a conflict with the primary objectives of the Act.
 - (d) The exemption will not undermine collective bargaining and labour peace in the Industry.
 - (e) There has been compliance with subclause (3) above.
 - (f) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
 - (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.

E -33

- (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
 - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability.
 - (d) The terms of the exemption sought, including the period thereof.
 - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
 - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
 - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
 - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
 - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
 - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
 - (k) What hardship may eventuate to employees in the event of the exemption being granted.
 - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
 - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.

- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.

17. POWERS OF DESIGNATED AGENTS

- (1) 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 part of the Agreement in terms of clause 27 of the Agreement or the Dispute Procedure in terms of clause 28 of this part of the 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 designated agent or be questioned or 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 authorization-
 - (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;
 - (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;
 - (e) inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to or seized by the designated agent.
- (2) A subpoena issued for any purpose in terms of subclause (1) shall be signed by the General Secretary of the Council or Regional Secretary of the Regional Chamber or the designated agent and shall-
- (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.
- (3) The written authorisation referred to in subclause (1) (d)-
- (a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 14 of the Constitution of the Republic of South Africa, 1996, and then only on application by the designated agent setting out under oath or affirmation the following information-
 - (i) the nature of the dispute;

E -35

- (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 General Secretary of the Council or Regional Secretary of the Regional Chamber.
- (4) 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 shall provide any facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.
- (5) The designated agent shall issue a receipt for any book, document or object seized in terms of subclause (4).
- (6) 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, shall apply equally to the questioning of any person or the production or seizure of any book, document or object in terms of this clause.
- (7) The designated agent shall pay the prescribed witness fee to each person who appears before him in response to a subpoena issued in terms of section 208 of the Act, where such fee has been specified by the Minister of Labour or, in the absence of such fee, as may be determined by the Council from time to time.
- (8) A person shall be guilty of 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 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 (6);
 - (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 the Act;
 - (g) if the person insults, disparages or belittles a designated agent, or prejudices or improperly influences an investigation or improperly anticipates the designated agent'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.

- (9) The designated agent may, on recommendation of the Council or Regional Chamber, refer any contempt to the Labour Court for an appropriate order.

18. FIXED-TERM CONTRACTS

- (1) An employer may engage fixed-term contract employees for a specific period and/or until the completion of a specific short-term task.
- (2) Any employee engaged on a fixed-term contract shall be employed subject to the same terms and conditions as prescribed in this part of the Agreement for other employees of the same class/job category.
- (3) Fixed-term contracts shall be reduced to writing and shall stipulate the commencement and termination dates and/or completion date of the contract task.
- (4) Copies of all fixed-term contracts (as well as accompanying exemption applications where applicable) concluded in the Industry shall be forwarded to Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, for registration and processing by no later than seven days after commencement of duty of such employee.

19. MEDICAL BENEFIT SOCIETY

- (1) There is hereby continued a society known as the Knitting Industry Medical Benefit Society (Northern Areas), (hereinafter referred to as the "Society"), originally established on 4 June 1971 in terms of Government Notice No. R. 911.
- (2) The purpose of the Society shall be assist members and their spouses with medical, dental and specialists' attention, medicines, medical appliances, hospitalisation, and such other benefits as may be determined by the Management Committee.
- (3) Every employer shall on the pay day of each week deduct R8,91 from the wages of each of his employees for whom minimum wages are prescribed in this part of the Agreement and who have worked for at least 20 hours in the week for which the deductions fall due.
- (4) In addition to the amount prescribed in paragraph (3), for a member whose spouse is included in this scheme, an additional deduction of R17.05 shall be made from the wages of each of those employees for whom minimum wages are prescribed in this part of the Agreement and who have worked for at least 20 hours in the week for which the deductions fall due.
- (5) The employer shall pay the amounts so deducted, together with an amount added by the employer equal to R17.05, within seven days from the end of the month in which the deductions fall due in respect of employees and their spouses to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, together with a statement in the form and manner specified by the Council or Regional Chamber.
- (6) Should any amount due in terms of this clause not be received by the Regional Chamber by the tenth day after the date of which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.

20. SICK PAY FUND

- (1) The Knitting Industry Sick Pay Fund (Northern Areas), (hereinafter referred to as the "Fund"), originally established on 4 June 1971 in terms of Government Notice No. R. 911, is hereby continued.
- (2)
 - (a) Every employer shall on the pay day of each week and from the first pay day after this part of the Agreement comes into operation, deduct R3,07 from the wages of each of his employees for whom minimum wages as prescribed in this part of the Agreement and who have worked for at least 20 hours in the week for which the deductions fall due.
 - (b) The employer shall pay the amounts so deducted from the wages of his employees, together with an amount of R5,32 in respect of each employee from whose wage deductions were made in terms of paragraph (a) above.
 - (c) The total sum representing the employer's contributions and the member's contributions in terms of paragraphs (a) and (b) above, shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, P O Box 1142, Woodstock, 7915, together with a return in the form and manner specified by the Council or Regional Chamber within 10 days of the end of the month in which the deductions fall due.
 - (d) Should any amount due in terms of this clause not be received by the Council by the tenth day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof, and at the discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.
- (3) The moneys of the Fund shall, subject to the provisions of this clause, be applied to provide members of the Fund with sick pay in case of absence from work owing to illness and shall be administrated by a Management Committee appointed by the Council or Regional Chamber and consisting of four representatives of the employers' organisation and four representatives of the trade union in accordance with the rules of the Fund, as set out hereunder.
- (4) Should a dispute arise at any time as to the provisions of this clause, the rules, the administration of the Fund or any other matter in regard to which the members of the Management Committee are equally divided, the matter in dispute shall be referred to the Council or Regional Chamber for a decision.
- (5) Sick Pay benefits shall be paid to employees for whom minimum wages are specified in this part of the Agreement, subject to the following provisions:
 - (a) No sick pay shall be paid to any employee in respect of any day of illness falling on a public holiday as specified in clause 8(4).
 - (b) No sick pay shall be paid to any employee in respect of any day of illness in respect of which the employee has been paid holiday pay as specified in clause 8 (1) or in the case of employees referred to in clause 8 (2) (a) in respect of a period of 12 working days calculated from the first working day after the date on which the factory closed for annual leave.
 - (c) No sick pay shall be paid in respect of periods of illness resulting from obesity, sterility and cosmetic surgery or for injuries covered by the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of

- 1993), or injuries in respect of which a claim may be made in terms of the provisions of the Road Accident Fund Act, 1996 (Act No. 56 of 1996).
- (d) Only members in good standing with the Fund shall be entitled to the benefits set out hereunder.
- (e) Any member whose payment of contributions to the Fund is more than 13 weeks in arrears shall not be entitled to any benefits provided by the Fund.
- (f) (i) Notwithstanding the provisions of subclause (5)(a), during the first 6 months of employment, an employee shall be entitled to one day's sick leave on full pay in respect of each completed period of 26 days of employment.
- (ii) After completion of 6 months of employment, an employee shall be entitled to 10 working days' sick leave on full pay in any calendar year reckoned from 1 January to 31 December.
- (6) Sick pay benefits shall be paid to all employees entitled thereto in terms of the provisions of subclause (5). A member who has been in the employ of the same employer for at least 10 months shall, on production of a medical certificate, be paid a maternity benefit equal to 20 days, wages.
- (7) All moneys received by the Fund shall be deposited in the banking account of the Regional Chamber. An official receipt shall be issued for all moneys received into the Fund. Withdrawals from the Fund shall be by cheque signed by the same signatories authorised to sign the cheques of the Regional Chamber. Separate accounts shall be kept in the Regional Chamber's books for the Fund.
- (8) The Council or Regional Chamber shall appoint a public accountant as auditor whose remuneration shall be paid out of the Fund. The accounts shall be audited every year for the period ending 31 December. The audited statement and balance sheet shall thereafter lie for inspection at the offices of the Regional Chamber and copies thereof shall be transmitted to the Transvaal Clothing Manufacturers' Association, the Southern African Clothing and Textile Workers' Union and to the General Secretary of the Council who shall transmit a copy thereof to the Registrar Labour, Relations.
- (9) In the event of the expiration of this part of the Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the Council or Regional Chamber until it be either liquidated or transferred by the Council or Regional Chamber to any other fund or funds whose objects shall be solely to benefit the employees of the Knitting Industry (Northern Area): Provided that, if no new agreement providing for the continuation of the Fund is entered into within one year after the date of expiration of this part of the Agreement or the Fund is not transferred as aforesaid within such period, the Fund shall be liquidated.
- (10) In the event of the dissolution of the Council or in the event of its ceasing to function during any period in which this part of the Agreement is binding in terms of section 32 (2) of the Act, the Fund shall be administered by a Committee consisting of three representatives of the employers' organisation and three representatives, of the trade union. In the event of such committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar: Labour, he may appoint a trustee or trustees to carry out the duties of the committee. If there is no Council in existence, the Fund shall on the expiration of this part of the Agreement be liquidated by the Committee or the trustees, as the case may be, in the manner set forth in subclause (11): Provided that if on such expiration the affairs of the Council have already been wound up and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59 (5) of the Act, as if it formed part of the general funds of the Council.

- (11) On liquidation of the Fund in terms of subclauses (9) and (10), the monies remaining to the credit of the Fund after payment of all claims against the Fund, including the administration and liquidation expenses, shall be paid into the general funds of the Council or Regional Chamber.
- (12) All administration and liquidation expenses shall be a charge against the Fund.
- (13) The disbursements from this Fund shall cease whenever the amount to the credit of the Fund falls below R10 000,00.
- (14) The Sick Pay Fund hereby assumes responsibility for the maternity benefits previously paid by the Maternity Benefit Fund.

21. SHORT TIME

- (1) Where short-time has been or is introduced in any workplace and the Regional Chamber has been notified in the form and manner specified by the Council or Regional Chamber, an employee who is not required to work on any day shall be given notice of that fact not later than closing time on the working day prior to the day on which his services are not required, except that, if short-time is to be worked on a Monday or starting from a Monday, an employee who is not required to work on such Monday shall be given notice of the fact not later than closing time on the preceding Thursday.
- (2) An employee who attends the workplace on any day shall, unless he has received notice in terms of subclause (1) that his services will not be required on such day, be employed or be paid a full day's wages.
- (3) Where full time is not being worked in any workplace, the work shall be distributed evenly among the employees in each of the sections or departments concerned.

22. KNITTING INDUSTRY PROVIDENT FUND (NORTHERN AREAS)

- (1) The Knitting Industry Provident Fund (Northern Areas), (hereinafter referred to as the "Fund"), originally established on 4 June 1971 in terms of Government Notice No. R. 911 for the purpose of providing benefits to members on leaving the Industry as provided for in this clause, is hereby dissolved with effect from 1 April 2008.
 - (a) The assets and the liabilities of the Fund on that date will be transferred to the Provident Fund for the Clothing Industry (Northern Areas), to be renamed the Provident Fund for the Clothing Industry (Northern Chamber) on 1 April 2008, (hereinafter referred to as the "Northern Chamber Fund") and to the Fashion Industry Protection Fund, provided that the split between the Northern Chamber Fund and the Fashion Industry Protection Fund shall be as recommended by an Actuary appointed for this purpose, and agreed to by the Administrative Committee, in consultation with their advisor;
 - (b) If the actual transfer of assets and liabilities takes place on a date other than 1 April 2008, the liabilities shall be increased by interest as recommended by the actuary and approved by the Administrative Committee, and the full value of assets as at 1 April 2008, with further investment returns to the date of transfer, less any expenses, shall be transferred;
 - (c) The administration and management of, and contributions and benefits paid by the Northern Chamber Fund will be governed by the collective agreement to be gazetted and an agreed set of Rules for the Northern Chamber Fund, the Rules

- ultimately being registered with the Registrar of Pension Funds in terms of the Pension Funds Act;
- (d) For each member of the Fund, the balance held in that member's account in the Fund on 1 April 2008 will be transferred to an account established for that member in the Northern Chamber Fund;
 - (e) The mechanism used for the dissolution of the Fund is the Transfer of Fund provision contained in sub-clause 22(11) in this Part E of the Main Agreement. The transfer of assets and liabilities between the Fund and the Fashion Industry Protection Fund is a once-off transfer;
 - (f) Notice of the dissolution of the Fund shall be provided to the Registrar: Labour, who shall gazette such notice, and such further regulatory action as is required shall be complied with; and
 - (g) Any requirements of a fiscal nature shall be fulfilled.
- (2) The Fund (and the Northern Chambers Fund with effect from 1 April 2008, upon which date all below will cease in the Fund, given the full transfer of the Fund to that fund and the Clothing Industry Protection Fund, and read as such) shall consist of-
- (a) contributions paid into the Fund in terms of the provisions of subclause (5);
 - (b) interest derived from the investment of any moneys of the Fund;
 - (c) any other sums to which the Fund may become entitled or which may be donated to the Fund.
 - (d) Any values transferred as a result of an amalgamation, merger, or a bulk transfer of assets and a liabilities as a result of sub-clause 1 (1) (a) above;
 - (e) Any values transferred from any other retirement provision, with the approval of the Administrative Committee (or its successor) subject to meeting the fiscal requirements by an individual member
- (3) **Administration of the Fund:**
- (a) The administration of the Fund shall be vested in an administrative committee consisting of three employers' representatives and three employees' representatives appointed by the Council or Regional Chamber. For each representative an alternate shall be appointed.
 - (b) Two employers' representatives and two employees' representatives shall constitute a quorum and all matters shall be determined by a majority vote.
 - (c) All expenses of administration shall be a charge against the Fund.
 - (d) The Council or Regional Chamber shall appoint a public accountant or accountants whose remuneration shall be paid out of the Fund. The accounts shall be audited every year for the annual period ending 31 December. The audited statements and balance sheet shall thereafter lie for inspection at the office of the Regional Chamber and copies thereof shall be transmitted to the Transvaal Clothing Manufacturers' Association, the Southern African Clothing and Textile Workers' Union and the General Secretary of the Council who shall transmit a copy to the Registrar: Labour.
 - (e) All moneys received by the Fund shall be deposited in the banking account of the Regional Chamber. An official receipt shall be issued for all monies received

into the Fund. Withdrawals from the Fund shall be by cheque signed by the same signatories authorised to sign the cheques of the Regional Chamber. Separate accounts for the Fund shall be kept in the Regional Chamber's books.

(f) **Fund Accounts**

The Administrative Committee may, upon advice from their advisors, establish such accounts in the Fund as may be deemed appropriate to ensure the sound ongoing functioning of the Fund, and may, having received advice from their advisors, credit such amounts to those accounts at establishment as the Administrative Committee determines, subject to the establishment of the accounts with these recommended amounts not placing the Fund in a financially unsound position. The Rules of the Northern Chamber Fund will reflect these reserve accounts, and will specify the provisions for the operation of these accounts. These reserve accounts will at all times be operated in compliance with any applicable legislation.

(4) **Members of the Fund (and the Northern Chambers Fund with effect from 1 April 2008, upon which date all members and their benefit entitlements of the Fund transfer to that fund, and read as such) shall consist of:**

- (a) Active members, for whom contributions are made on a regular basis;
- (b) Inactive members, who are currently dormant in the Fund, because they are not currently employed in the industry as defined in Clause 3, but who are expected to return to the industry; and
- (c) Unclaimed members who last paid a contribution to the Fund more than six months ago, are no longer employed in the industry, and have not come forward to claim their benefit in the Fund, provided that where the Unclaimed Members of the Fund are transferred to the Northern Chamber Fund on 1 April 2008, and become Unclaimed Members of the Northern Chamber Fund on that date, any tax obligations which lay with the Fund in relation to these Unclaimed Members are transferred to the Northern Chamber Fund.

(5) **Contributions:**

- (a) (i) Every employer shall on the pay day of each week and from the first pay day after the coming into operation of this part of the Agreement, deduct from the wage of each contributor in his employ, 5,75 per cent of the prescribed wage payable to such contributor, calculated to the nearest cent: Provided that no deduction shall be made from the wage of a contributor who has worked for less than 20 hours in the week in which the deductions fall due.
 - (ii) To the aggregate amount deducted under subparagraph (i), every employer shall contribute an amount equal to 6,5% in respect of each employee. The employer shall forward the total amounts deducted under subparagraph (i), together with his own contributions in terms of this subparagraph to the Regional Secretary of the Regional Chamber, P.O. Box 4866, Johannesburg, 2000, together with a statement in the form and manner specified by the Council or Regional Chamber, within seven days from the date on which the deductions were made.
- (b) Should an employer fail to make the required deduction from the wages of his employees, he shall not be entitled to recover the arrear amounts from said employees.

- (c) Notwithstanding anything to the contrary which may be contained in this clause, deductions shall not be made from the wage of a worker who has been in the Industry for less than 20 days.
 - (d) Notwithstanding the provisions of paragraph (a) of this subclause, other employees in the employ of the employer who are members of the trade union and who elect to become contributors may at the discretion of the Administrative Committee contribute to the Fund, and the provisions of this clause shall mutatis mutandis apply in respect of such employee and the employer of such employees.
 - (e) Should any amount due in terms of this clause not be received by the Regional Chamber by the seventh day after the due date on which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: The interest received shall be added to the interest income of the Fund and form part of the general investment returns of the Fund.
- (6) Benefits (subject to the transfer of all benefit entitlement to the Northern Chambers Fund upon the merger and dissolution of the Fund):
- (a) Benefits as are specified in subclause (7) shall be provided to members.
 - (b) Members who have left the Industry may apply for a withdrawal of accumulated benefits. Application for benefits shall be made in writing in the form of and manner specified by the Council or Regional Chamber.
 - (c) Every employee shall be required to nominate a beneficiary to whom, in the event of the death of the member, any benefits due to such member shall be paid. In the event of the Fund not being advised of such beneficiary, any benefits due at the time of a member's death shall be paid into the estate of such deceased member. The nomination of a beneficiary shall be made in the form specified in the rules of the Fund.
 - (d) When a member returns to the Industry before payment has been made on an application for withdrawal of benefits, the application shall automatically lapse and contributions be resumed forthwith.
- (7) **Amount of benefits:** The minimum benefits that shall be paid to a member shall be the total amount contributed by such member plus-
- (a) 100% of the amount contributed on his behalf by his employer, less any allocation for expenses that have been made from the employer's contribution;
 - (b) in the case of the death, retrenchment or retirement at the stipulated retirement age of a member, 100 per cent of the amount contributed on his behalf by his employer, plus any amounts that the member may be entitled to.
- (8) **Payment of interest:** In addition to the refund of contributions and the payment of such benefits as may have accrued to him, a member shall be entitled to interest, the rate of which shall be determined by the Administrative Committee, upon the advice of the Actuary, and will be related to the investment returns earned on the assets of the Fund. The interest accruing to members shall be credited to the members' accounts and paid to them, together with the refund of contributions and any other benefits which may be due.

(9) **Additional benefits:**

- (a) The Council or Regional Chamber may, from time to time, increase the benefits stated herein by declaration of a bonus in the light of improvement in the finances of the Fund through-
- (i) accrual of interest;
 - (ii) contributors leaving the Industry before qualifying for the full 100 per cent of the employer's contributions: Provided that any such bonus shall be determined only after an investigation by a public accountant into the assets and liabilities of the Fund: Provided further that such bonus shall not be in excess of any amount recommended by such accountant. Any such bonus shall be credited to the member's account and shall be payable to such member at the same time as and in addition to the benefits specified in subclause (7) and (8).
- (b) The Council or Regional Chamber may use moneys arising out of subclause (9) (a) (i) and (ii) to augment the following benefits:
- (i) Retirement/Enhanced Benefit paid to contributors who leave the Industry from the age of 50 years, owing to retirement or retrenchment on the following basis:

Age	% of total benefit
50 years	5%
51 years	10%
52 years	15%
53 years	20%
54 years	25%
55 years	30%
56 years	35%
57 years	40%
58 years	45%
59 years	50%
60 years	55%

On 1 April 2008 the retrenchment enhancement described above will cease, and a value is to be calculated by the Actuary and recommended to the Administrative Committee as the amount which gives recognition to the expected present value of the future severance benefit offset as described in Clause 24 that the employer would have enjoyed had the retrenchment enhancement benefit not been discontinued. Upon acceptance of the recommendation by the Actuary, this amount will be transferred to the account established in the Fashion Industry Protection Fund for the employer of that member, to be dealt with in accordance with the provisions of this agreement that relates to the Fashion Industry Protection Fund.

On 1 April 2008 the retirement enhancement benefit shall cease, and a value is to be calculated for each member by the Actuary and recommended to the Administrative Committee as the amount which gives recognition to the expected present value of the previous enhanced retirement benefit that the member may have enjoyed had he reached retirement, and the benefit not been discontinued. Upon acceptance by the Administrative Committee of the recommendation by the Actuary, this amount will be added to the members' share of each active member of the Fund. For any dormant member who has reached retirement age, that

dormant member shall be assumed to retire on that date, and have their benefit enhanced appropriately.

- (ii) payment of a death benefit of R10 000,00 to the estate, the beneficiary or beneficiaries, or any person defraying the funeral expenses of such deceased contributor.

(c) **Housing loans:**

- (i) The Administrative Committee may grant housing loans to contributors: Provided that loans granted in terms of this subclause shall be subject to such conditions as may be laid down by the Administrative Committee from time to time with the approval of the Registrar: Labour.
- (ii) Housing loans shall be repayable at such rates as the Administrative Committee may from time to time determine.
- (iii) On receipt of a stop order in respect of a housing loan duly signed by the employee concerned, an employer shall deduct from his employee's wages the weekly amount stipulated in the stop order, and shall forward the amounts so deducted to the Regional Secretary of the Regional Chamber not later than the 10th day of each month.

- (10) Benefits not to be ceded or assigned: No benefit or right to a benefit shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated, nor shall any contribution made by a member or on his behalf be liable to be attached or be subject to any form of execution under a judgment or order of a court of law, and if a member attempts to assign, transfer or otherwise cede or pledge or hypothecate any benefit or right to a benefit, payment of benefits may be withheld, suspended or entirely discontinued if the Administrative Committee so determines.

- (11) **Transfer of Fund:** Notwithstanding anything to the contrary herein contained, the Council or Regional Chamber may formally dissolve the Fund as constituted and transfer all funds, assets and liabilities of this Fund to another fund/s and/or society duly constituted for substantially the same purposes for which this Fund was created. In the event of such decision, all amounts standing to the personal credit of members of the Fund shall be transferred to their credit under the new fund or society and the benefits due to members, as at the date of such transfer, shall in no way be diminished by virtue of such transfer except where particularly provided for by agreement by the parties:

- (a) On the dissolution date, all contributions to the fund shall cease, and accrual of benefits shall terminate.
- (b) Notice of the dissolution of the Fund shall be provided to the Registrar of Labour, who shall gazette such notice and such further regulatory action as is required shall be complied with.

(12) **Dissolution of Fund:**

- (a) In the event of the Council being dissolved during the currency of this part of the Agreement or any extension thereof, then, notwithstanding anything to the contrary contained in this part of the Agreement, contributions to the Fund shall cease as from the day following the date of coming into operation in the Gazette of the dissolution of the Council in terms of section 59 of the Act. The Fund shall be administered by a committee consisting of three representatives of the employers' organisation and three representatives of the trade union. In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the

Registrar: Labour, he may appoint a trustee or trustees to carry out the duties of the Committee for such purpose until expiration of this part of the Agreement by effluxion of time or cessation for any other cause, upon which the Fund shall be liquidated mutatis mutandis as though the employees had left the Industry: Provided that the duties in connection with such liquidation shall be performed by such other body or persons as the Registrar: Labour may appoint.

- (b) In the event of the expiration of this part of the Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the Administrative Committee until it be either liquidated or transferred by the Council or Regional Chamber to another Fund in terms of subclause (11): Provided that if no new agreement providing for the continuation of the Fund is entered into within one year after the expiration of this part of the Agreement or the Fund not being transferred as aforesaid within such period, the Fund shall be liquidated by the Council or Regional Chamber in the manner set forth in paragraph (a) and in subclause (13).
- (13) **Liquidation:** On liquidation of the Fund in terms of subclause (12) and payment of money due to members in terms of that subclause, the monies 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 general funds of the Council or Regional Chamber. If the affairs of the Council have already been wound up and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59 (5) of the Act, as if it formed part of the general funds of the Council.
- (14) **Payment of benefits in the event of death:**
- (a) Every contributor shall, on joining the Fund, appoint a beneficiary and shall advise the Provident Fund of the address of such beneficiary. In the event of the contributor wishing to change his beneficiary at a later date, he shall advise the said Fund, in writing, of such change of name and address. Every contributor shall further furnish the said Fund with the name and address of dependants and any change of address of dependants.
- (b) In the event of a contributor failing to appoint a beneficiary in terms of paragraph (a) hereof, or of the beneficiary predeceasing the contributor, the Administrative Committee shall pay the benefits to such dependants of the contributor as it may in its discretion deem fit.
- (c) Every employer shall notify the Regional Secretary of the Regional Chamber of the death of any contributor in his employ and the Regional Secretary shall, as soon as possible, on receiving information from any source of the death of a contributor, notify the dependants or beneficiary, as the case may be, by letter or circular stating the name and last-known place of work of the deceased contributor and the fact that benefits may be claimed at an address specified by the Administrative Committee.
- (d) In the event of the Regional Secretary not having been notified of the latest address of a dependant or appointed beneficiary, the Administrative Committee shall take such measures as it may deem expedient to trace such dependant or appointed beneficiary.
- (e) If within 12 months after the death of a contributor no claim is made by a dependant or beneficiary, or the Administrative Committee has, in terms of this subclause, been unable to trace any dependants or beneficiaries, it shall be assumed that there are no dependants or beneficiaries, and the benefits shall revert to the Fund for the benefit of the remaining contributors and there shall thereafter be no further claim against the Fund in respect of that contributor: Provided that the Administrative Committee shall, in the event of a claim being received within a period of three years after the death of a contributor, be

entitled, in its entire and absolute discretion, to make payments to the dependants or beneficiaries concerned out of the moneys which have reverted to the Fund.

23. SAFEGUARD OF WORKERS' EARNINGS

- (1) Every employer shall within two months of the date of coming into operation of this part of the Agreement or within two months of the establishment of a new factory, give a banker's guarantee or other guarantee acceptable to the Regional Chamber, to be completed in the form and manner specified by the Council or Regional Chamber, payable on demand on the employer's insolvency or otherwise. Such guarantee shall be used to cover the payment of holiday pay and wages due to the employers' employees: Provided that the money so guaranteed shall be equal to five week's wages for every employee.
- (2) Should any employer fail to provide an acceptable guarantee to the Regional Chamber in terms of the above paragraph, he shall within two months of the date of coming into operation of this part of the Agreement or within two months of the establishment of a new factory deposit a sum of money with the Regional Chamber equal to five weeks' basic wages.

24. SEVERANCE PAY

- (1) An employer shall 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: Provided that previous employment with the same employer shall be taken into account if the break between the period of employment is less than one year.
- (2) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer shall not be entitled to severance pay in terms of subclause (1).
- (3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable in terms of this part of the Agreement.
- (4) Until 1 April 2008, where an employee who is aged 50 years or older, subject to sub-clause (5) below, is retrenched, such employee shall receive the stipulated enhanced benefits due in terms of clause 22 (9) (b) (i) of this part of the agreement. With effect from 1 April 2008, the benefit enhancement will cease, as described in sub-clause 4 (f) above. Until 1 April 2008, the employer's liability in respect of retrenchment benefits for such employee shall be limited to the payment of the difference between the said enhanced Provident Fund benefit and the amount of severance pay reflected in sub-clause (1) above where the enhanced Provident Fund benefit is less than the severance benefit. With effect from 1 April 2008, the employer's liability in respect of retrenchment benefits will be the amount of severance pay reflected in sub-clause (1) above. However, to the extent that the employer is compliant, the employer may claim an offset from the Fashion Industry Protection Fund as is provided for in sub-clause 30 (21).
- (5) Where an employee has reached the stipulated retirement age of 60 years of age or older, the employer shall have no liability for severance pay.

25. OVERALLS

The employer shall within three months of the commencement of employment of an employee, or within three months of the date of coming into operation of this part of the

Agreement, issue every employee with one new overall/protective garment of the required size and as approved by the Council or Regional Chamber. Thereafter, one overall shall be issued to every employee every 1 July.

26. AGENCY SHOP: EMPLOYERS' ORGANISATION

- (1) Every employer that belongs to the employers' organisation shall pay the membership fee referred to in subclause (3).
- (2) Every employer that does not belong to the employers' organisation shall pay the levy referred to in subclause (3).
- (3) The amount of the monthly membership fee or monthly levy shall be calculated in accordance with the following formulae:
 - (i) an employer employing 60 or fewer employees, a total of R250,00 per month (inclusive of VAT);
 - (ii) an employer employing 61 or more employees, R4,25 per employee (inclusive of VAT) times the number of employees for whom wages are prescribed in this part of the Agreement.
- (4) Every employer shall pay the monthly amount to the Regional Secretary of the Northern Chamber of the National Council, P O Box 1142, Woodstock, 7915, before the 15th day of each month, together with an analysis of the amounts received, after withholding a collection fee as determined and agreed upon from time to time by the parties to the Council.
- (5) The Regional Secretary of the Northern Chamber of the National Council shall deposit all monies received in terms of this clause into the Northern Chamber's account and at the end of each month-
 - (a) pay all membership fees received to the employers' organisation; and
 - (b) deposit all the levies received into a separate account administered by
- (6) The monies held in the separate account may be used only for expenditure incurred by the employers' organisation relating to collective bargaining or dispute resolution in the Industry and may not be-
 - (a) paid to a political party as an affiliation fee; or
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office.
- (7) The employers' organisation shall arrange for an annual audit of the separate account within six months of its financial year by an auditor who-
 - (a) conducts the audit in accordance with generally accepted auditing standards;
 - (b) reports in writing to the employers' organisation, and in this report expresses an opinion as to whether or not the employers' organisation has complied with the provisions of its constitution relating to financial matters and the provisions of subclause (6).
- (8) The employers' organisation shall submit to the Northern Chamber of the National Council, within 30 days of receipt of the auditor's report referred to in subclause (7), a certified copy of that report.

- (9) Any person may inspect the auditor's report submitted to the Northern Chamber of the National Council in terms of subclause (8) at the Northern Chamber's offices, 148 Kerk Street, Johannesburg.
- (10) The Northern Chamber of the National Council shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.
- (11) The Independent Exemptions Body may, on application from an employer who conscientiously objects to associating with persons other than those who share his religious beliefs, grant an exemption from the provisions of this clause.
- (12) Any dispute about the application, including enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator: Provided that the parties mutually agree on such conciliator and arbitrator. If no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator, who must be senior counsel, shall be appointed from the ranks of an accredited agency.

27. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT

- (1) The Council or Regional Chamber shall take all reasonable steps necessary to ensure compliance with this part of the Agreement. If, whether owing to its own investigations or owing to any other source, it appears that the provisions of this part of the Agreement have been breached, then the following procedure shall apply to enforce compliance:
 - (a) The General Secretary of the Council or Regional Secretary of the Regional Chamber shall request a designated agent to investigate the alleged breach and/or refer the matter to the Regional Chamber.
 - (b) If, on completion of the investigation, the designated agent has reason to believe that this part of the Agreement has been breached, the designated agent may endeavour to secure compliance with the Agreement through conciliation.
 - (c) At the end of the conciliation process, the designated agent shall submit a report to the Regional Secretary of the Regional Chamber and/or General Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this part of the Agreement through conciliation and the outcome thereof.
 - (d) On receipt of the report, the Regional Secretary of the Regional Chamber and/or General Secretary of the Council may-
 - (i) require the designated agent to make further investigation; or
 - (ii) refer the matter to arbitration in terms of this part of the Agreement; or
 - (iii) take such other steps as may be deemed reasonable.
 - (e) If the Regional Secretary of the Regional Chamber and/or General Secretary of the Council decides to refer the matter to arbitration, he shall appoint an arbitrator to hear and determine the alleged breach of this part of the 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 Regional Secretary of the Regional Chamber and/or General Secretary of the Council shall serve notices of the date, time and venue of the arbitration

E -49

hearing 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 registered employer's 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 or for the Council or Regional Chamber to recover its cost of providing the arbitration service: Provided that where the Council's or Regional Chamber's accredited conciliator has made an advisory award in terms of clause 28(3)(c) which is substantially the same as the award made by the arbitrator, the arbitrator shall make costs order, as set down by the Council or National Association of Bargaining Councils, against the party concerned which shall, as a minimum, cover the Council's and/or Regional Chamber's costs 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 and notice of the arbitration proceedings 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 part of the Agreement;

- (vi) vary, rescind or amend any arbitration award made by him or any other arbitrator on good cause shown; 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, 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 or Regional Chamber.
- (k) The General Secretary of the Council or Regional Secretary of the Regional Chamber may apply to make the arbitration award an order of the Labour Court in terms of section 158 (1) of the Act.
- (l) The provisions of this procedure, shall stands in addition to any other legal remedy which the Council or Regional Chamber or a party to the Council may have to enforce an agreement or a unilateral change to an employee's conditions of service and which is in contravention of the agreements of the Council and which is binding on a party or non-party to such an agreement.

28. DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
 - (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
 - (b) The Council shall, from time to time, adopt, by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.
 - (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same rights, powers and obligations as the Council.
- (2) **Accreditation**
 - (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
 - (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.
- (3) **Panel of conciliators, arbitrators and senior arbitrators**
 - (a) The Council shall appoint:

E -51

- (i) a panel of conciliators, for the purpose of conciliating disputes;
- (ii) a panel of arbitrators, for the purpose of determining disputes;
- (iii) a panel of senior arbitrators, for the purpose of determining disputes where
 - (aa) the nature of the questions of law raised by the dispute;
 - (bb) the complexity of the dispute;
 - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
 - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
 - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.
 - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
 - (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' lists shall 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 General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant 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 arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3)(d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
 - (i) for serious misconduct; or

- (ii) owing to incapacity; or
 - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3)(c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3)(i), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

(4) *Dispute involving non-parties to the Council*

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council, shall be resolved by the Council in accordance with the following procedure-

(a) *Referral and conciliation of disputes:*

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.
- (iv) The conciliator may, during conciliation proceedings:
 - (aa) mediate the dispute;
 - (bb) conduct a fact-finding exercise; and
 - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.

- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4)(a)(iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

(b) Adjudication of disputes referred to the Council for arbitration:

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:
 - (aa) the Act requires that the dispute be arbitrated; or
 - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) 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 the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to:
 - (aa) give evidence;
 - (bb) call witnesses;
 - (cc) question the witnesses of any other party;
 - (dd) address arguments to the arbitrator;
 - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.

- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.
- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord, and without limiting the generality thereof, 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;
 - (bb) the award is ambiguous or contains an obvious error or omission;
 - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

(5) Disputes involving parties to the Council -

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to subclause 5 (d) below.
- (d) Upon receipt of a written request for arbitration of a dispute about the

interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

(6) Compliance procedure and enforcement of collective agreements by Council -

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
 - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber;
 - (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by the Council, where these exist, by-
 - (aa) publicising the contents of the agreement;
 - (bb) conducting inspections;
 - (cc) investigating complaints;
 - (dd) endeavouring to secure compliance with the agreement through conciliation; or
 - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
 - (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
 - (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
 - (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
 - (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
 - (vii) If a party to such an arbitration is not a party to the Council and objects to

the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.

- (viii) The provisions of subclause 4(b)(v) to 4(b)(xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
 - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
 - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
 - (cc) charging a party to the arbitration an arbitration fee;
 - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
 - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
 - (ff) any award contemplated in section 138(9) of the Act;
 - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of subclause (6) shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure shall stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

(7) Non-Compliance

- (a) Outsourcing to non-compliant companies shall not be permitted in the industry.
- (b) The parties shall enter into agreements with all Provincial and Local governments which shall have the effect that their sourcing from the Industry shall include a requirement to only source from companies which hold a valid Certificate of Compliance from the bargaining council.

(8) Compliance Promotion

- 8.1 All current non-compliant companies which meet a minimum of 80% of the party-to-party *negotiated wage rate* for current employees, shall be regarded as level B compliant, subject to sub-clause 8.2 below.

E -57

- 8.2 All companies described in 8.1 above shall achieve 100% wage compliance within a period of 18 months from 1 September 2012, in 6 monthly equal increments, failing which full compliance enforcement including the execution of writs shall apply to them.
- 8.3 The arrears of non-compliant companies shall be ring-fenced in a 'suspense account' at 100% of the verified arrears value and a written time-bound repayment plan agreed with the bargaining council. They should also sign a legally enforceable acknowledgement of debt.
- 8.4 The current policy that allows for a maximum of 6-months as a repayment period for arrears shall be amended, to allow for a maximum eighteen (18) months repayment period with effect from 1 November 2012.
- 8.5 The arrears will become payable in full should the employer become non-compliant, or default on the repayment plan at any time in future, unless otherwise agreed by the parties.
- 8.6 At every future meeting of the National Bargaining Council, each party shall make one practical concrete suggestion on how to further promote compliance in the industry.
- 8.7 The National Bargaining Council General Secretary shall have unfettered authority to serve any writ of execution upon any employer who fails to become compliant in terms of the new compliance provisions envisaged in this agreement, unless the parties agree otherwise.
- 8.8 Nothing in this agreement shall have the effect of downward migration of conditions of employment for any current employee.
- 8.9 The Trade Union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of this agreement.

29. EXHIBITION OF AGREEMENT

Every employer shall keep exhibited in his workplace, in a place readily accessible to his employees, a legible copy of this part of the Agreement in one of the official languages.

30. INDUSTRY PROTECTION FUND

- (1) In terms of section 29(1)(g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a Fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the Parties to the Regional Chamber, which programmes are aimed at protecting the industry in the Northern Chamber of the Council, and jobs within it by improving its competitiveness in the fashion industry.
- (3) The Fund shall commence on 1 July 2001 and shall continue to operate until such date as the Regional Chamber and the Parties thereto may decide.

- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 11 cents: Provided that no deduction shall be made from the wages of any employee who has worked less than 20 hours in the week in which the deduction falls due.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of subclause (4), contribute 15 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded by the employer to the Regional Secretary of the Regional Chamber, within seven days from the end of the week in which the deductions fall due. Should any amount due in terms of this clause not be received by the Regional Chamber by the tenth day after the due date in which it is payable, the employer shall pay weekly interest on such amount or on such lesser amounts as remain unpaid, calculated at the ruling prime overdraft rate plus two per cent per annum: Provided that the Council or Regional Chamber shall be entitled in its absolute discretion to waive the payment of such interest or part thereof. At the discretion of the Council or Regional Chamber, the interest may accrue to the general funds of the Council or Regional Chamber.
- (7) The monies collected by the Regional Chamber shall be paid monthly into the Regional Chamber's bank account and, for the purposes of receiving' these funds and for disbursing them for the purpose for which they are intended, shall be accounted for separately.
- (8) The monies collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in subclause (2)-
 - (a) "Buy Local" campaigns;
 - (b) combating customs fraud and illegal imports.or for such other strategies that meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Transvaal Clothing Manufacturers' Association (TCMA) become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in subclause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber and subject to approval by the Registrar: Labour.
- (10) The Fund's monies shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the TCMA is in doubt about whether contemplated expenditure of the Fund's monies qualifies as expenditure on an authorised activity, SACTWU or the TCMA, as the case may be, may request confirmation in advance by the Regional Chamber in this regard.
- (12) No monies of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the TCMA and the Regional Chamber have signed a written agreement, acceptable to the Registrar: Labour, to secure compliance with the provisions of the Fund as set out herein.

- (13) Any interest that is earned on Fund monies at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the TCMA shall, annually, by the second month of the Regional Chamber's financial year, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan will be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the Parties will be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he is satisfied that the expenditure
- (a) is in terms of the approved plan;
 - (b) is clearly classified by strategy, activity and the nature of the expense; and
 - (c) has been authorised by the Regional Organising Secretary or National Organising Secretary of SACTWU, or the Executive Director of the TCMA.
- Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure will be presented to the Regional Chamber for approval prior to payment.
- (16) Any expenses that have been incurred by SACTWU or the TCMA for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the TCMA, may be recovered by the Regional Chamber from SACTWU or the TCMA, as the case may be.
- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every three months in relation to income and expenditure of the Fund. This accounting to Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the TCMA shall be obliged to report back to the Regional Chamber every three months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund.
- (19) In the event that there is a disagreement between the Parties as to whether any activity or expenditure or proposed activity expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.
- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

31. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2014: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 September 2013.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right

to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.

- (3) The reference to negotiations in subclause (2) above shall mean negotiations as contemplated in subclause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

32. ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) The Council shall conduct a survey on the extent and type of contract work in the clothing industry.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.

33. PRODUCTIVITY

The Productivity Scheme which was agreed to is:

Contained in Annexure B.

- (1) The bargaining council shall establish a dedicated productivity unit to promote productivity issues in the industry, as part of the NBC's value-added services.
- (2) The bargaining council shall commission a feasibility study for the establishment of a training institute similar to the previous Clothing Industry Training Board (CITB), to be operated under the auspices of the bargaining council as part of the NBC's value-added services.
- (3) Absenteeism
 - (i) The memorandum of Understanding as concluded between the parties on 14 June 2007 and implemented shall remain in effect for the duration of the Agreement only.
 - (ii) Where companies' have introduced the productivity scheme as per the provisions of the absenteeism MOU, such schemes are extended for the duration of this agreement, subject to plant level agreements entered into and signed off.

34. HIV/AIDS

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment as set out in Annexure A to this agreement shall be policy in the industry.

World International HIV/AIDS Day

The industry acknowledges the importance of creating awareness of the HIV/AIDS pandemic. To this end, employers are encouraged to grant employees on World International HIV/AIDS

Day thirty minutes paid time off to participate in awareness activities agreed to at industry level.

35. CONTRACT EMPLOYEES

Contained in Annexure D.

36. WORKING IN ARRANGEMENTS

Employees shall be permitted to work in the time lost due to strike action incurred during the September / October 2009 protected wage strike at normal rates of pay, provided that this is agreed to at plant level and further provided that where agreed, such employees shall be offered a loan equal to between one week and two weeks' wages, deductible from their wages in equal weekly amounts over a 10 week period.

ANNEXURE A**CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS
AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING
INDUSTRY OF SOUTH AFRICA****1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:
 - eliminating unfair discrimination in the workplace based on HIV status;
 - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
 - promoting appropriate and effective ways of managing HIV in the workplace;
 - creating a balance between the rights and responsibilities of all parties.

2. OBJECTIVES

- 2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
 - (i) creating a non-discriminatory work environment;
 - (ii) dealing with HIV testing, confidentiality and disclosure;
 - (iii) providing equitable employee benefits;
 - (iv) dealing with dismissals; and
 - (v) managing grievance procedures.

- 2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:
- (i) creating a safe working environment for all employers and employees;
 - (ii) developing procedures to manage occupational incidents and claims for compensation;
 - (iii) introducing measures to prevent the spread of HIV;
 - (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
 - (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:
- (i) between employers, employees and the trade union in the workplace; and
 - (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

3. POLICY PRINCIPLES

- 3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5 Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

4. APPLICATION AND SCOPE

- 4.1. All employers and employees within the clothing manufacturing industry, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this code, the term "workplace" should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.
- 4.3. This Code, however, does not impose any legal obligation in addition to those in the Employment Equity Act, the Labour Relations Act and this code, or in any other legislation referred to in the Code.

- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

5. LEGAL FRAMEWORK

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:
- (i) Employment Equity Act, No. 55 of 1998;
 - (ii) Labour Relations Act, No. 66 of 1995;
 - (iii) Occupational Health and Safety Act, No. 85 of 1993;
 - (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
 - (v) Basic Conditions of Employment Act, No. 75 of 1997; and
 - (vi) Medical Schemes Act, No. 131 of 1998.
 - (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.
- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.
- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.
- 5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.
- 5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.
- 5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.
- 5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).
- 5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.
- 5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

- 5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].
- 5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT

- 6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:
- (i) recruitment procedures, advertising and selection criteria;
 - (ii) appointments, and the appointment process, including job placement;
 - (iii) job classification or grading;
 - (iv) remuneration, employment benefits and terms and conditions of employment;
 - (v) employee assistance programmes;
 - (vi) job assignments;
 - (ix) training and development;
 - (x) performance evaluation systems;
 - (xi) promotion, transfer and demotion;
 - (xiii) termination of services.
- 6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:
- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
 - (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
 - (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
 - (iv) providing support for all employees infected or affected by HIV and AIDS; and
 - (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE

7.1. HIV Testing

- 7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

- 7.1.2. Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts. ¹⁽¹⁾
- 7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out in item
- 7.1.4. Authorised testing
- Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:
- (i) during an application for employment;
 - (ii) as a condition of employment;
 - (iii) during procedures related to termination of employment;
 - (iv) as an eligibility requirement for training or staff development programmes; and
 - (v) as an access requirement to obtain employee benefits.
- 7.1.5. Permissible testing
- (a) An employer may provide testing to an employee who has requested a test in the following circumstances:
 - (i) As part of a health care service provided in the workplace;
 - (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
 - (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.
 - (b) Furthermore, such testing may only take place within the following defined conditions:
 - (i) At the initiative of an employee;
 - (ii) Within a health care worker and employee-patient relationship;
 - (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
 - (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.
- 7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.
- 7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

¹⁽¹⁾ The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the National Bargaining Council for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

- 7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.^{2[2]} Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

7.2. Confidentiality and Disclosure

- 7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.
- 7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.
- 7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:
- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
 - (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
 - (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

8. PROMOTING A SAFE WORKPLACE

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:
- (i) the risk, if any, of occupational transmission within the particular workplace;
 - (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
 - (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
 - (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
 - (v) the procedures to be followed in applying for compensation for occupational infection;
 - (vi) the reporting of all occupational accidents; and
 - (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

^{2[2]} See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
 - (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.
- 9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

10. EMPLOYEE BENEFITS

- 10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits
- 10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

11. DISMISSAL

- 11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.
- 11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

12. GRIEVANCE PROCEDURES

- 12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.
- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.

- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

13. MANAGEMENT OF HIV IN THE WORKPLACE

- 13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:

13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and

13.1.2. Long and short term measures to deal with and reduce this impact, including:

- (i) An HIV/AIDS Policy for the workplace
- (ii) HIV/AIDS Programmes, which would incorporate:
 - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
 - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
 - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE

- 14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.

14.2. Broadly, impact assessments should include:

- (i) Risk profiles; and
- (ii) Assessment of the direct and indirect costs of HIV/AIDS;

14.3. Risk profiles may include an assessment of the following:

- (i) The vulnerability of individual employees or categories of employees to HIV infection;
- (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
- (iii) A profile of the communities from which the organisation draws its employees;
- (iv) A profile of the communities surrounding the organisation's place of operation; and
- (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.

14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:

- (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
- (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;

- 14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE

15.1. A Workplace HIV/AIDS Policy

- 15.1.1. Every workplace should develop an HIV/AIDS policy^{3[3]}, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;
- (ii) an outline of the HIV/AIDS programme;
- (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);
- (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
- (v) grievance procedures in line with item 12 of this Code;
- (vi) set out the means of communication within the organisation on HIV/AIDS issues;
- (vii) details of employee assistance available to persons affected by HIV/AIDS;
- (viii) details of implementation and coordination responsibilities; and
- (ix) monitoring and evaluation mechanisms.

- 15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including the trade union, employee representatives, occupational health staff and the human resources department.

- 15.1.3. The policy should reflect the nature and needs of the particular workplace.

- 15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:

- (i) communicated to all concerned;
- (ii) routinely reviewed in light of epidemiological and scientific information; and
- (iii) monitored for its successful implementation and evaluated for its effectiveness.

15.2. Developing Workplace HIV/AIDS Programmes

- 15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

- 15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:

- (i) hold regular HIV/AIDS awareness programmes;
- (ii) encourage voluntary testing;
- (iii) conduct education and training on HIV/AIDS;

^{3[3]} This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

- (iv) promote condom distribution and use;
- (v) encourage health seeking behaviour for STD's;
- (vi) enforce the use of universal infection control measures;
- (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
- (viii) endeavour to establish a wellness programme for employees affected by HIV/AIDS;
- (ix) provide access to counselling and other forms of social support for people affected by HIV/AIDS;
- (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
- (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4
- (xii) regularly monitor, evaluate and review the programme.

15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

16. INFORMATION AND EDUCATION

- 16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.
- 16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.

GLOSSARY

<i>Affected employee</i>	an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive
<i>AIDS</i>	AIDS is the acronym for "acquired immune deficiency syndrome". AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
<i>Epidemiological</i>	The study of disease patterns, causes, distribution and mechanisms of control in society.
<i>HIV</i>	HIV is the acronym for "human immuno deficiency virus". HIV is a virus which attacks and may ultimately destroy the body's natural immune system.
<i>HIV testing</i>	taking a medical test to determine a person's HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of 'risk behaviour' (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee's or job applicant's HIV status.
<i>HIV positive</i>	having tested positive for HIV infection.
<i>Infected employee</i>	an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
<i>Informed consent</i>	a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
<i>Policy</i>	a document setting out an organisation's position on a particular issue.
<i>Pre and post test counselling</i>	a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
<i>Reasonable Accommodation</i>	means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
<i>STDs</i>	acronym for "sexually transmitted diseases". These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.
<i>Surveillance Testing</i>	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

ANNEXURE B**PRODUCTIVITY****The following provisions shall be applicable to the plant level productivity incentive schemes:**

- (1) Employers shall pay an amount of 0.5% of the weekly wage into a dedicated productivity incentive bank account. This must be done on a weekly basis or on the date that wages is normally paid, if it is paid at a time other than weekly.
- (2) The money in this productivity incentive bank account is ringfenced for the introduction of plant level productivity incentive schemes only.
- (3) This productivity incentive scheme bank account shall be opened and authorised on the basis of co-signatures, as follows: a person nominated by management plus a SACTWU shop steward (where there are no shop stewards at a workplace, a representative nominated by the workers shall be the second signatory).
- (4) With effect from 1 September 2008, each workplace shall have a period of 2 months within which they must reach agreement between management and the union about how the productivity incentive scheme at that workplace will function and how the incentives are to be paid.
- (5) If there is no productivity incentive scheme agreement reached by 1 November 2008, all the monies in the productivity bank account must be paid out to the workers as part of their wages, until an agreement on an appropriate productivity incentive scheme is reached.
- (6) The productivity incentive scheme agreements reached must ensure that all workers covered by the terms of this agreement, not just some, shall benefit from the incentive scheme.
- (7) All productivity scheme agreements reached must be registered with the National Bargaining Council for the Clothing Manufacturing Industry, within 1 month after agreement has been reached.
- (8) Productivity incentive scheme agreements shall not contain any provisions, which have the effect of downward variation of any term or condition of employment.
- (9) The productivity incentive scheme envisaged in this agreement shall be in addition to and not in place of any existing productivity incentive scheme, which may currently exist.
- (10) If the workplace closes or is liquidated, all the money left in the productivity incentive bank account must be paid out to the employees at that workplace and who are covered by the terms of this agreement.

ANNEXURE D**CONTRACT EMPLOYEES**

- (1) Those contract employees with 12 months' or more employment with the same employer shall be converted into permanent employees.
- (2) All contract employees shall be entitled to receive a pro-rata share of all statutory payments due to permanent employees.
- (3) All contract employees who are in employ as at the end of November each year shall be entitled to full payment for all public holidays which fall during the annual shutdown period.
- (4) Employees who have completed a learnership shall not be placed on a further contract period after the completion of such a learnership, but shall be employed as a permanent fulltime employee.
- (5) Where there are more beneficial arrangements (other than those set out in sub-clauses (1) to (4) above) governing the employment of contract workers, such provisions shall remain effective.

PART F:

**CONSOLIDATED
AGREEMENT**

FOR THE

**WESTERN CAPE
REGION**

(CLOTHING)

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY**NATIONAL MAIN COLLECTIVE AGREEMENT**

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

Cape Clothing Association

Coastal Clothing Manufacturers' Association

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

¹South African Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' 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 National Bargaining Council for the
Clothing Manufacturing Industry.

¹ *This Employer association has not signed the 2013/2014 Party-to-Party Agreement, however, remains an Employer Party to the Bargaining Council and, hence, is reflected on this page.

1. SCOPE OF APPLICATION

The terms of this Agreement shall be observed in the Clothing Manufacturing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

- Part A Provisions for the Eastern Cape Region
- Part B Provisions for the Free State and Northern Cape Region
- Part C Provisions for the KwaZulu-Natal Region
- Part D Provisions for the Northern Region (Clothing)
- Part E Provisions for the Northern Region (Knitting)
- Part F Provisions for the Western Cape Region (Clothing)
- Part G Provisions for the Western Cape Region (Country Areas)
- Part H Provisions for the Western Cape Region (Knitting)
- Part I Provisions for the Non-Metro Areas

by the employers and employees in the Clothing Industry who are members of the employers' organisations and the trade union, respectively.

2. PERIOD OF OPERATION OF THIS AGREEMENT

- (1) This agreement is binding on the parties hereto from 1 September 2013 until 31 August 2017 unless the parties agree otherwise in writing.
- (2) The parties record that they intend to request the Minister of Labour to extend this agreement to non-parties in the Clothing Industry in terms of section 32 of the Labour Relations Act 66 of 1995. The period of operation of this agreement in respect of non-parties will be determined by the Minister.

Original Agreement signed at CAPE TOWN on behalf of the Parties the 24TH day of FEBRUARY 2014.



FREDA DOSTHUYSEN
Chairperson



MARTHIE RAPHAEL
Vice-Chairperson



SICELO NDUNA
General Secretary

PART F : PROVISIONS FOR THE WESTERN CAPE REGION (CLOTHING)**1: SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed in the Clothing Industry -
- (a) by the employers and the employees who are members of the employers' organisations and the trade union respectively;
 - (b) in the Magisterial Districts of:
 - (i) The Cape, Simon's Town, Goodwood and Bellville, including those portions of the Magisterial Districts of Simon's Town, Goodwood and Bellville that were used to create the Magisterial District of Mitchell's Plain on 2 March 1992, Somerset West and Strand by employers and employees who are engaged in or employed in the operations referred to in paragraphs (a) and/or (b) of the definition of "Clothing Industry" in clause 3 of this Collective Agreement;
 - (ii) Wynberg, including that portion of the Magisterial District of Wynberg that was used to create the Magisterial District of Mitchell's Plain on 2 March 1992, by employers and employees who are engaged in or employed in the operations referred to in paragraphs (a) and/or (b) and/or (c) of the definition of "Clothing Industry" in clause 3 of this Collective Agreement; and
 - (iii) Malmesbury, including that portion from which the Magisterial District of Moorreesburg was constituted on 29 November 1985 by Government Notice 2649, by employers and employees who are engaged in or employed in the operations referred to in paragraphs (a) (excluding belts made from leather or synthetic material) and/or (b) of the definition of "Clothing Industry" in clause 3 of this Collective Agreement.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall:
- (a) apply only in respect of employees for whom wages are prescribed in this part of the Agreement.
 - (b) not apply to employees and working directors whose wages are more than R88 086.00 per annum;
 - (c) not apply to employers and employees engaged or employed in the Knitting Division.
- (3) Clauses 1(1)(a), 2, 11(4)(b), 14(1), 26(13)(a) to (13)(g)(v), and 37(5) of this part of the Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.
- (4) The Table of Contents of this Part F of the Main Collective Agreement is as follows:

F - 2

CLAUSE NO.	DESCRIPTION
1.	SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT
2.	PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT
3.	DEFINITIONS.....
4.	WAGES
5.	PAYMENT OF WAGES
6.	TIME RECORDS
7.	WAGE INCENTIVES, PIECE-WORK AND TASK-WORK.....
8.	PROPORTION OR RATION OF EMPLOYEES
9.	ORDINARY HOURS OF WORK, MEAL INTERVALS AND REST INTERVALS
10.	OVERTIME.....
11.	PAYMENT FOR OVERTIME AND WORK ON SATURDAYS, SUNDAYS AND PUBLIC HOLIDAYS
12.	SHORT-TIME
13.	PROVISION OF TEA AND OTHER BEVERAGES
14.	CLOSED SHOP
15.	ANNUAL LEAVE AND PAID PUBLIC HOLIDAYS
16.	ENGAGEMENTS, TERMINATIONS, ABSENCES FROM WORK AND TRANSFERS IN OCCUPATION
17.	RECORD CARDS AND AGREEMENT.....
18.	TERMINATION OF EMPLOYMENT
19.	EXEMPTIONS
20.	SEATING ACCOMMODATION
21.	TOOLS AND MATERIALS.....
22.	EXPENSES OF THE COUNCIL AND REGIONAL CHAMBER
23.	TRADE UNION REPRESENTATIVES ON THE REGIONAL CHAMBER
24.	POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE OF AND IN TERMS OF THIS PART OF THE AGREEMENT.....
25.	OUTWORK AND DISCLOSURE OF EMPLOYERS' PATTERNS ETC.....
26.	CLOTHING INDUSTRY HEALTH CARE FUND
27.	TRADE UNION SUBSCRIPTIONS
28.	REGISTRATION OF EMPLOYERS.....
29.	WAGE GUARANTEE
30.	MATERNITY LEAVE
31.	NEGOTIATION OF PROCEDURES AT INDIVIDUAL ESTABLISHMENTS
32.	ACCESS
33.	SHOP STEWARDS
34.	RETRENCHMENT BENEFITS
35.	PATERNITY LEAVE.....
36.	PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT ..
37.	DISPUTE PROCEDURE
38.	INDUSTRY PROTECTION FUND.....
39.	TRADE UNION CAPACITY BUILDING FUND.....
40.	COLLECTIVE BARGAINING/DISPUTE RESOLUTION LEVY
41.	FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION.....
42.	ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

43.	EMPLOYMENT OF CERTAIN PERSONS PROHIBITED
44.	TRADE UNION AGENCY SHOP
45.	PRODUCTIVITY (Annexure B)
46.	HIV/AIDS (Annexure A)
47.	CONTRACT EMPLOYEES (Annexure D).....
48.	WORKING IN ARRANGEMENTS

2: PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

3: DEFINITIONS

Any expressions used in this part of the Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendment of such Act, and unless the contrary appears, words importing the masculine gender shall include females and the singular shall include the plural and vice versa; further, unless inconsistent with the context:

"Act" means the Labour Relations Act, 1995;

"blocker (clothing)" means an employee who blocks men's and boys' hats or caps;

"blocker (millinery)" means an employee who is engaged in the processing of the raw materials into shapes either by hand or by machine and includes a stiffener;

"boiler attendant" means an employee engaged in firing a boiler and maintaining the water level and steam pressure;

"casual employee" means an employee who is employed by an employer on not more than three days in any week and who is engaged in one or more of the following duties or capacities:

- (a) general gardening work;
- (b) loading or unloading;
- (c) cleaning bush;
- (d) washing vehicles or windows;

"chopper-out (millinery)" means an employee who is engaged in one or more of the following operations:

- (a) Cutting ribbons, trimmings and linings;
- (b) laying up materials preparatory for cutting;

"clerk (clothing and Millinery sectors)" means an employee who is engaged in:

- (a) writing, typing and filing;
- (b) operating a calculating or punch card machine;
- (c) any other form of clerical work;

and includes a cashier, despatch clerk, mannequin, storeman, telephone switchboard operator and work study clerk but does not include any other class of employee elsewhere

defined in this clause notwithstanding the fact that clerical work may form part of such employee's work;

"clicker" means an employee who cuts parts of garments from dies using a mechanical or hydraulic press;

"Clothing Industry" or "Industry" means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear, nightwear (including pyjamas), outerwear, protective wear (including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties), and underwear;

A. and includes -

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of buttonholes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments of parts of garments, irrespective of whether or not such operation(s) is/are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

B. but excludes -

- (a) belts, braces, garters, suspenders and armllets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

"clothing machine mechanic" means an employee who is engaged in servicing, repairing or adjusting machinery, equipment or installations in any establishment;

"clothing technician" means an employee who is employed for the purposes of being trained in all aspects of the Industry, who is registered as such with the Regional Chamber and who may perform any of the duties of the different classes of employees for whom wages are specified in clause 4 of this part of the Agreement;

"complying employer" means an employer which is registered with the Council and which has registered all permanent and contract employees with the Council, and which has given effect to all collective agreements of the Council which are applicable to it in each of its establishments, or which has received exemption from any collective agreement to the extent of such exemption;

"conveyor" means any type of moving mechanical apparatus which feeds work to employees at a pre-determined rate or at a pre-determined interval;

"Council" means the National Bargaining Council for the Clothing Manufacturing Industry registered in terms of section 29 of the Labour Relations Act, 1995;

"cutter" means an employee, other than an interlining cutter, trimmer, leather cutter or tie cutter, engaged in cutting material with any power driven cutting machine, knife or shears, but

excluding any cutting operations referred to in the definitions of "Grade A and B employee", and "Grade C employee";

"day worker" means an employee who is not a shift worker;

"dealer" or **"general dealer"** means a person or persons holding a licence under item 3 of the First Schedule to the Registration and Licensing of Business Ordinance;

"dependant" means, for the purpose of the Clothing Industry Health Care Fund, any of the following persons:

- (a) The declared spouse of the contributor living at the same address;
- (b) the unmarried children under the age of 18 of the contributor, including natural offspring, stepchildren or adopted children;
- (c) the unmarried children of the contributor, including natural offspring; stepchildren or adopted children, over the age of 18 but under the age of 25, who are at school or who are full-time students at a tertiary institution or who are physically or mentally disabled;

whose admittance to membership of the Fund is at the sole discretion of the Health Care Fund Management Committee;

"despatch clerk" means an employee who is responsible for the packing or the despatch of goods for transport or delivery and who may supervise the assembling, checking, mass-measuring, packing, marking, addressing or despatching of goods or packages;

"despatch packer" means an employee engaged in making up parcels, cartons or bales in readiness for transport, delivery or posting;

"establishment" means any place in which the Clothing Industry is carried on;

"experience" means:

A. For the purposes of the Clothing and Garment Knitting Sectors of the Industry:

- (a) Category (1) - in relation to clerks and factory clerks, the total period or periods of employment which such employees have had as clerks and factory clerks, as the case may be, irrespective of the trade in which such experience was gained;
- (b) Category (2) - in relation to employees other than clerks, factory clerks, clothing machine mechanics, motor vehicle drivers, boiler attendants, despatch packers, travellers' drivers, watchmen or caretakers, labourers and general workers, the total period or periods of employment of employees in the Clothing Industry in any capacity other than that of clerks, factory clerks, clothing machine mechanics, motor vehicle drivers, boiler attendants, despatch packers, travellers' drivers, watchmen or caretakers, labourers and general workers;
- (c) Category (3)-in relation to clothing machine mechanics, the total period or periods of employment which such employees have had as clothing machine mechanics;
- (d) category (4)-in relation to supervisors, quality controllers and instructors, the total period of periods of employment which such employees have had as supervisors, quality controllers and instructors;

- (e) category (5)-in relation to clothing technicians, the total period or periods of employment which such employees have had as clothing technicians:

Provided that where any employee with less than one year's experience has not been re-employed in the Industry within a period of five years from the date on which he was last employed in the Industry, any experience gained shall be ignored for the purpose of calculating the minimum wage at which he may commence service.

B. For the purposes of the Millinery Sector of the Industry

In relation to any employee in the Millinery Sector of the Industry, other than a general worker, motor vehicle driver and/or watchman, the total period or periods of employment of an employee in any branch of the Millinery Sector of the Industry in any capacity other than that of a general worker, motor vehicle driver and/or watchman, and shall be deemed in each contract of service to have been continuous from the time the employee enters his employer's service until the time such service is terminated: Provided that if any employee has been in employment for six weeks or more in any quarter, he shall, for the purposes of computing his experience, be deemed to have been in employment for a period of 13 weeks in that quarter, and if he has been in employment in any quarter for less than six weeks, he shall, for the purposes of computing his experience, be deemed not to have been employed at all in that quarter;

"factory clerk" means an employee who is engaged in one or more of the following duties or capacities:

- (a) calculating piece-work or bonus payments from production schedules;
- (b) checking attendance records or recording particulars of employees at work or absent from work; preparing wage cards or envelopes for subsequent use by another employee;
- (c) checking or recording for production control;
- (d) copying invoices or other documents by machine or hand;
- (e) issuing machine parts, tools, oil and other equipment from a workshop store and/or recording same;
- (f) issuing material, lining, canvas, trimming, buttons, cotton and zips to the different departments of an establishment and/or recording same;
- (g) issuing trimming, lining, cotton and zips to employees of an establishment from a sub-store and/or recording same;
- (h) receiving into stock, goods, material, trimming, tools and other equipment and checking goods received against specifications of goods ordered such as quantity, size and quality;
- (i) recording particulars of materials or general stores consumed or to be consumed or keeping stock records;
- (j) recording particulars of waste;

Provided that a calculator may be used in carrying out one or more of the above duties;

"general worker (clothing)" means an employee who is engaged in one or more of the following operations within a Clothing and/or Garment Knitting establishment:

- (a) carrying, moving or stacking articles;

F - 8

- (b) delivering letters, messages or goods outside the factory premises on foot or by means of a bicycle, tricycle or hand-propelled vehicle;
- (c) folding and/or inserting mail, affixing post stamps or labels for posting;
- (d) making tea or similar beverages, snacks or sandwiches and washing cups, saucers and kitchen utensils;
- (e) marking, branding, stenciling or affixing labels on boxes, bales or other containers by hand;
- (f) opening or closing doors, unpacking boxes, packages, bales or other containers;
- (g) operating a duplicating and/or addressograph and/or franking machine;

“general worker (millinery)” means an employee who is engaged in one or more of the following operations within a Millinery Establishment:

- (a) Cleaning premises, utensils or other articles;
- (b) loading and/or unloading vehicles;
- (c) carrying, moving or stacking goods;
- (d) making and/or maintaining fires or removing refuse or ashes;
- (e) delivering or conveying letters, messages or other articles on foot or by means of a bicycle or propelled vehicle;
- (f) opening and/or closing packages;

“Grade I employee (millinery)” means an employee who is engaged in one or more of the following operations:

- (a) Writing out labels and tickets;
- (b) issuing trimmings, ribbons, linings and miscellaneous materials, e.g. artificial flowers;
- (c) checking finished hats for flaws;
- (d) preparing linings;
- (e) checking wires of brims;
- (f) damping and preparing materials for blocking;
- (g) preparing and sorting sample ranges;
- (h) carrying messages or hats or parts of hats from one operation to another within an establishment;
- (i) applying lacquer to hats, and includes a sheener and/or polisher;
- (j) assisting at the blocking machine;
- (k) making tea or similar beverages;

"Grade A employee" means an employee engaged in one or more of the following duties or capacities:

- (a) **"belt shaper"** means an employee engaged in:
 - (i) cutting belt blanks from any type of material;
 - (ii) trimming and shaping of belt blanks after glueing;
- (b) **"colour weigher"** means an employee who prepares chemicals, colouring materials and dyes according to given formulae for subsequent use in various processes;
- (c) **"embroidery artist"** means an employee designing embroidery patterns;
- (d) **"fitter up"** means an employee who takes the outside of garments together with the cut out linings (called trimmings) and adjusts the outsides and insides together accurately so that the parts may go forward to the machine to be put together correctly;
- (e) **"handyman"** means an employee who makes minor repairs or effects renovations to buildings, fixtures and fittings and who covers ironing and pressing machines or tables with any type of material;
- (f) **"presser"** means an employee engaged in the pressing of finished garments by machine, but excluding the ironing of garments;
- (g) **"pleating machine setter"** means an employee who sets an automatic pleating machine;
- (h) **"shaper"** means an employee who shapes designs of lapels and collars of coats preparatory to underbasting;

Screen printing operations

- (i) **"negative maker"** means an employee who prepares photographic negatives, separates colours in a design, paints onto clear film sheet in repeat with exact reference marks, as part of the preparation of screens for screen printing;
- (j) **"screen maker (engraver)"** means an employee who engraves and cures screens;
- (k) **"screen printer"** means an employee engaged in:
 - (i) carrying out checks for faults;
 - (ii) checking the base fabrics to ensure correct face and quality;
 - (iii) examining screens from wash bays to ensure that they are in a satisfactory condition;
 - (iv) operating a screen printing machine;
 - (v) positioning colour in correct sequence to ensure that colour combination matches the master feeler and colour card;
 - (vi) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;

F -10

- (vii) setting up screens in sequence of colour to be printed on fabric;
- (viii) squaring off and testing that screens fit according to master feeler;
- (ix) supervising the handling of screens to and from wash bays;
- (x) supervising the operations of the colour thrower;

"Grade B employee" means an employee engaged in one or more of the following duties or capacities:

- (a) **"assistant colour weigher"** means an employee who assists a colour weigher;
- (b) **"Baster"**, including outbaster, means an employee engaged in handsewing in setting a coat or parts of a coat into position preparatory to other operations and/or underbasting, i.e. handsewing linings of coats into position preparatory to sewing to edge seams;
- (c) **"bowmaker"** means an employee making bows for dresses;
- (d) **"bra moulder"** means an employee operating a bra moulding machine and performing one or more of the following operations:
 - (i) selects, inserts or fits appropriate bra cup mould into machine;
 - (ii) sets heat and dwell time;
 - (iii) sets depth of mould;
 - (iv) places material in position;
- (e) **"bra shaper"** means an employee shaping moulded bra cups singly or in quantity;
- (f) **"cap framer"** means an employee who put stiffener, wire and pad or lining into cap;
- (g) **"chaser"** means an employee who searches and locates garments or orders in an establishment and who may organise orders through the establishment;
- (h) **"conveyor-feeder"** means an employee responsible for feeding prepared parts of garments onto a conveyor for further operations and who may be assisted by one or more sorters;
- (i) **"cook"** means an employee engaged in preparing meals and cooking;
- (j) cutting individual ties by hand;
- (k) **"design room assistant"** means an employee who assist employees in the design room in one or more of the following duties or capacities:
 - (i) fetching or taking patterns, garments, parts of garments, cotton, cloth or trimmings to and from the different departments in the establishment;
 - (ii) cutting out patterns after they have been marked out by pattern makers or pattern graders;
 - (iii) stamping identification details such as size, style and seasons on cut out patterns;

- (l) **"embroidery machinist"** means an employee who operates an embroidery machine and who threads up, adjusts tension, checks and/or examines work under needles;
- (m) embroidering and/or beading by hand.
- (n) **"factory shop assistant"** means an employee who serves and assists customers and who may select, wrap and receive payment for goods sold;
- (o) **"finisher"** means an employee who performs one or more of the following operations by hand;
- (i) putting pads or wadding into shoulders of coats;
 - (ii) fastening or "serging" sleeve-heads;
 - (iii) wadding sleeve-heads;
 - (iv) felling silk-facing already basted in position;
 - (v) making buttonholes by hand;
 - (vi) felling sleeve-head linings, holding in such position with fingers;
- (p) **"hand patent turner"** means an employee engaged in turning out or turning over the edge of collars, bands, cuffs, tabs or pockets with the use of a hand-iron;
- (q) **"ironer"** means an employee engaged in:
- (i) ironing and folding garments;
 - (ii) ironing and folding and pinning garments;
 - (iii) ironing jackets and fly linings;
 - (iv) steaming garments on dummy;
 - (v) ironing by means of domestic type ironing machine;
- (r) **"laboratory assistant"** means an employee who prepares samples and who may make initial and routine tests and record the results thereof;
- (s) **"lace cutter"** means an employee engaged in laying up and cutting lace according to pattern;
- (t) **"lace machinist"** means an employee who operates an automatic lace sewing machine;
- (u) **"machinist"** means an employee who performs by sewing machine any operation in the making of clothing;
- (v) **"matcher"** means an employee who matches and marks pocket flaps and patches according to fabric pattern;
- (w) **"measurer and marker"** means an employee who measures and marks trouser waists;
- (x) **"measurer and trimmer"** means an employee who measures and trims linings of coats and jackets;
- (y) **"fabric inspector"** means an employee who measures fabric and operates an inspection machine;
- (z) **"order checker"** means an employee who checks assembled orders;
- (aA) **"passer"** means an employee who examines the finished garment or parts thereof for flaws and faults;

- (aB) **"pattern copier"** means an employee who copies master patterns, excluding the construction thereof, in pleating process;
- (aC) powdering lays from perforated master lays and perforating lays with a tracing wheel;
- (aD) **"re-cutter"** means an employee engaged in:
- (i) cutting of repairs and/or replacements, including time spent in searching for and matching up cloth;
 - (ii) re-cutting of dress fronts after embroidery;
- (aE) shrinking press operator;
- (aF) **"steambox operator"** means an employee engaged in putting prepared formers in steambox and taking them out again in hand or loom pleating process;

Screen printing operations

- (aG) **"assistant screen maker (engraver)"** means an employee who assists a screen maker (engraver);
- (aH) **"assistant screen printer"** means an employee who assists a screen printer and who may screen print by hand;
- (aI) **"dark room assistant"** means an employee who makes photographic positives of clear sheets of design colours and masks positives for repeat;
- (aJ) **"mixing and filtering operator"** means an employee engaged in:
- (i) cleaning and preparing drums returned from printing machines;
 - (ii) cleaning mixing equipment;
 - (iii) ensuring thorough mixing and blending of dyes and auxiliaries;
 - (iv) filtering mixed dyes;
 - (v) handling drums from mixers to filter machines;
 - (vi) watching for malfunctions in mixing equipment;
 - (vii) operating a high speed stirrer;
 - (viii) operating a tub washer;
 - (ix) removing solid or foreign articles from print paste;
 - (x) supplying clean drums to colour weighers;
 - (xi) transferring identifying labels to drums of dye;
- (aK) **"oven and curing operator"** means an employee engaged in drying and curing parts of garments after the printing operation;
- (aL) **"screen controller"** means an employee engaged in:
- (i) applying masking tape set for automatic printing machines;
 - (ii) checking for faults and rectifying same;
 - (iii) clearing blockages by means of a high pressure gun;
 - (iv) painting in any open motif pinholes;
 - (v) painting in masking and making trial print proof;
 - (vi) placing screens in the rack ready for use;
 - (vii) putting end rings into rotary screens;
 - (viii) retouching screens;
- (aM) **"screen preparer"** means an employee engaged in:

- (i) coating screens;
- (ii) fitting gauze to frames;
- (iii) operating a stretching machine;
- (iv) placing screens in conditioning chamber;
- (v) preparing and checking screen frames;
- (vi) removing grease from screens;

(aN) **"squeegee preparer"** means an employee who makes and prepares squeegees,

and shall include an employee not elsewhere specified in this part of the Agreement;

"Grade C employee" means an employee engaged in one or more of the following duties or capacities;

- (a) **"belt operator"** means an employee engaged in:
 - (i) bending belt buckles;
 - (ii) covering buckles by hand or machine;
 - (iii) ironing belts;
 - (iv) pressing buckle prongs onto buckles;
 - (v) punching holes for buckles and prongs;
 - (vi) riveting belt buckles;
 - (vii) stapling buckles onto belts;
 - (viii) trimming and cleaning of belts after machining;
- (b) **"bias binding cutter"** means an employee engaged in cutting bias binding;
- (c) **"bobbin winder"** means an employee engaged in winding bobbins;
- (d) **"box assembler"** means an employee engaged in folding cardboard into containers for garments;
- (e) **"bra fuser"** means an employee engaged in:
 - (i) spraying and fusing together two bra cup fibre fillers;
 - (ii) spraying fusing material on to bra cup fibre filler and fusing;
- (f) **"bra marker"** means an employee placing moulded bra cups on forms and patterns over cup and marking bra cup;
- (g) **"button coverer"** means an employee engaged in covering buttons by hand or machine;
- (h) **"cap fastener"** means an employee engaged in putting fasteners on caps;
- (i) **"cleaner"** means an employee engaged in cutting or trimming off loose ends of cotton or cloth left on garments or parts of garments or embroidery by previous operators;
- (j) **"collar/cuff trimmer"** means an employee engaged in trimming collars, cuffs, flaps and pockets by knife, scissors, guillotine or contour machine;
- (k) **"crimper"** means an employee engaged in crimping the seams of collars and cuffs prior to machining;
- (l) **"embroidery cleaner"** means an employee who cuts off threads from embroidery;

F -14

- (m) **"embroidery framer"** means an employee who inserts fabric into frames and removes embroidery from frames and who loads or unloads frames onto and from machine;
- (n) **"embroidery marker"** means an employee who marks embroidery designs on fabric;
- (o) eyelet punching and letting;
- (p) fitting garments on models but excluding marking, measuring or cutting off of material;
- (q) **"folder"** means an employee engaged in folding and/or buttoning up garments, placing shirt on frame, inserting neck capes and folding shirts;
- (r) **"foundation garment operator"** means an employee engaged in:
- (i) assembling inner and outer bra cups by hand;
 - (ii) assembling suspenders or shoulder straps by hand;
 - (iii) cutting and capping of steels, bones or wires;
 - (iv) cutting of individual girdle blanks;
 - (v) cutting lace, elastic, ribbon or shoulder straps into required lengths (excluding the cutting from lays or according to pattern);
 - (vi) folding and rolling of bias binding by means of automatic machine;
 - (vii) inserting bones or wires by hand;
 - (viii) ironing girdle or corset panels;
 - (ix) ironing partly-assembled bra cups;
 - (x) pasting, sticking or pinning panels on girdle blanks;
 - (xi) riveting of hooks and eyes and swedging of buckles and press studs;
- (s) **"fuser"** means an employee engaged in:
- (i) feeding parts into automatic fusing press;
 - (ii) ironing on fusible interlining with hand-iron;
 - (iii) loading and unloading racks;
 - (iv) operating semi-automatic fusing machine or press;
 - (v) positioning and spot fusing fusible interlining with special machine;
- (t) **"label printer"** means an employee engaged in printing or writing labels;
- (u) **"lace separator"** means an employee separating lace into two sections by means of a hot needle or by draw thread;
- (v) **"line feeder"** means an employee engaged in feeding and/or collecting work, garments, parts of garments, cotton, trimmings, cartons, boxes and labels on the line or in a department of an establishment;
- (w) **"marker"** means an employee engaged in marking the position of pockets, flaps, vents, buttons or button holes and cutting the mouth of pockets;
- (x) **"mitre trimmer"** means an employee engaged in marking and trimming mitres on chokers or cravats;
- (y) **"packer"** means an employee engaged in:
- (i) attaching belts to skirts or trousers;
 - (ii) assembling garments into bundles or orders prior to their being sent to the despatch department;
 - (iii) attaching swing or identification tickets to garments;
 - (iv) bagging garments;

- (v) packing garments into boxes or other suitable wrapping;
 - (vi) sorting garments;
- (z) **"parts examiner"** means an employee engaged in examining cut and/or uncut parts of lays;
- (aA) **"parts ironer"** means an employee engaged in:
- (i) ironing crease lines on cuffs and fronts of shirts;
 - (ii) ironing cuffs and collars by means of a small pressing machine;
 - (iii) ironing loose collars;
 - (iv) ironing seams of ties, including bow ties;
 - (v) re-ironing garments which have already been folded and ironed;
- (aB) **"plain sewer"** means an employee engaged in performing the following operations by hand:
- (i) fastening catches in tops of trousers;
 - (ii) fastening facings inside already basted in position;
 - (iii) fastening edge stays;
 - (iv) fastening permanent turn-ups;
 - (v) felling bindings;
 - (vi) felling bottoms;
 - (vii) felling bottoms of linings or seams of same already based in position;
 - (viii) felling crutch linings in trousers;
 - (ix) felling necks or armholes of waistcoats;
 - (x) felling waistband linings or part thereof;
 - (xi) making and sewing on hangers;
 - (xii) making canvases;
 - (xiii) padding collars or lapels;
 - (xiv) putting on bridles by hand;
 - (xv) sewing on buttons by hand;
 - (xvi) sewing on hooks and eyes;
 - (xvii) sewing operations on ties;
 - (xviii) sewing shoulder pads into dresses and/or unlined coats;
- and includes various odds and ends of sewing;
- (aC) **"pinner"** means an employee engaged in:
- (i) making and pinning underwear bows;
 - (ii) pinning garments;
 - (iii) pinning underwear motifs and trimmings;
- (aD) **"pleater"** means an employee engaged in:
- (i) guiding material with paper through automatic pleating machine;
 - (ii) putting material between two paper looms (formers) and preparing for steambox in hand or loom pleating process;
 - (iii) taking material out of looms in hand or loom pleating process;
- (aE) **"press stud machine operator"** means an employee engaged in operating a press stud machine; putting on of hooks and bars on top of the flies of trousers and the extension flaps of trousers;
- (aF) **"scalloper"** means an employee engaged in cutting cloth from scallops;
- (aG) **"skiver"** means an employee engaged in operating a skiving machine which reduces the thickness of leather;

F -16

- (aH) **"sloper"** means an employee engaged in marking and trimming the shape of necks of garments;
- (aI) **"sorter"** means an employee engaged in:
- (i) sorting and bagging dye-lots prior to dyeing;
 - (ii) sorting out for various operations;
- but excluding sorting parts from the cut lay;
- (aJ) **"spotter"** means an employee who removes spots and stains;
- (aK) **"stamper"** means an employee stamping sizes and/or identifying work numbers on garments or parts of garments;
- (aL) **"stapler"** means an employee engaged in stapling or pinning parts of garments together;
- (aM) **"steam press operator"** means an employee engaged in passing garments through steam press and receiving out at the other end;
- (aN) **"swatch cutter"** means an employee engaged in cutting travellers' swatches;
- (aO) **"tablehand"** means an employee engaged in:
- (i) cleaning off any excess rubber solution;
 - (ii) painting seams of oilskins and waterproof hats;
 - (iii) smearing rubber solution on seams or edges and rolling them over with small hand roller;
- (aP) **"ticket sewer"** means an employee engaged in stitching tickets on garments by machine;
- (aQ) **"transferer"** means an employee engaged in transferring or stenciling garments, parts of garments or panels by hand or machine;
- (aR) **"turner"** means an employee engaged in:
- (i) machine patent turning, i.e. operating any form of automatic or semi-automatic machine which turns out or turns over the edges or points of collars, bands, cuffs, tabs, pockets, or loops, including the semi-automatic machine making collar tabs;
 - (ii) turning garments by hand, trimming and turning garments or parts of garments;
- (aS) underpressing of men's and boys' melton and linen caps;
- (aT) **"welder"** means an employee engaged in operating an electric fabric welding machine;
- (aU) zip machine operator;

"head cutter" means a qualified cutter as defined in the Agreement who is in charge of and actively supervises the cutting department of an establishment;

"hourly rate" or **"hourly wage"** means the weekly wage prescribed in clause 4(1) read with clause 4(10), divided by:

60 in the case of a watchman or caretaker;
46 in the case of a boiler attendant;
42½ in the case of all other employees;

"incapacity" means inability to work owing to any sickness or injury of an employee, other than sickness or injury caused by the employee's own misconduct: Provided that any such inability to work caused by an accident or a scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993), shall be regarded as incapacity only during any period in respect of which no disablement payment is payable in terms of that Act;

"instructor" means an employee who is responsible for training employees in any establishment or who in any manner whatsoever assists an employer in or about a factory in carrying out training programmes to improve the productivity of his employees;

"interlining cutter" in the shirt section means an employee employed solely in marking in and/or cutting linings for shirts, pyjamas and other nightwear;

"labourer" means an employee engaged in one or more of the following duties or capacities:

- (a) binding, wiring, or strapping boxes or bales or other containers;
- (b) cleaning and/or washing premises, plant, machinery, vehicles, tools and/or other articles;
- (c) fitting and mending machine belts, cleaning, oiling and greasing machines, moving tools, equipment and machines, changing needles, cleaning cotton and/or cloth from underneath throat plate;
- (d) general gardening work;
- (e) loading or unloading vehicles, trailers or international standard containers;

"laymaker" means an employee, other than an interlining cutter, trimmer or tie cutter, who positions patterns for a lay;

"layer up" means an employee engaged in laying up material and may include slitting the ends and sides and/or who sorts parts from the cut lay;

"learner" means an employee whose period or periods of employment do not entitle him to be paid the wage specified in this part of the Agreement for a qualified employee of his class;

"leather cutter" means an employee, other than a lay-maker, engaged in cutting parts of leather garments;

"level B compliance" refers to the status of non-compliant employers who bring themselves within the provisions of clause 37(8). For so long as such employers abide by all the conditions set out therein, no writs of execution in respect of non-compliance will be enforced against them, and they will be entitled to Level B Compliance Certificates from the Council;

"milliner" means an employee other than a trimmer (millinery), blocker (millinery) or Grade I employee (millinery) who is engaged in the making of ladies' and/or girls' hats and includes a setter in a Millinery Establishment;

"Millinery Industry" means the industry in which employers and employees are associated for the design and making of complete hats with material and the set out and/or chop out of patterns, but excludes -

- retail millinery, i.e. making hats for sale in such establishments; and
- the making of single hats to the measurement of individual persons;

F -18

"millinery machinist" means an employee who performs any operation by sewing machine within a millinery establishment and shall include an employee in the millinery industry not elsewhere specified in this part of the Agreement;

"monthly wage" means the weekly wage multiplied by four and a third;

"motor vehicle driver (clothing)" means an employee engaged in driving a motor vehicle, scooter or fork lift, and for the purposes 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;

"motor vehicle driver (millinery)" means an employee who is engaged in driving a motor vehicle and for the purposes 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;

"normal shift worker" means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

"packer (millinery)" means an employee who is engaged in packing goods for transport or delivery within a Millinery Establishment;

"patent machine" means a button, buttonhole, padding or felling machine;

"paternity" means any event connected to the birth or adoption of a child parented by an eligible employee;

"pattern grader" means an employee who grades patterns to various sizes and makes ancillary patterns to a master pattern and includes an employee engaged in making master patterns for pleating process;

"pattern maker" means an employee engaged in designing and/or making master patterns;

"piece-work" means any system by which earnings are calculated upon the quantity or output of work performed;

"plain sewer (millinery)" means an employee who performs operations on a flat sewing machine within a Millinery Establishment;

"qualified" means that an employee has completed his learnership in terms of this part of the Agreement;

"quality controller" means an employee, other than a passer, who carries responsibility for quality control in a factory or any department of a factory, i.e. ensuring that the quality of any garment or part of any garment, whether in a finished or unfinished state, meets the standard of quality determined by the employer;

"Regional Chamber", for purposes of this part of the Agreement, means the Cape Chamber (Western Cape Sub-Regional Chamber) of the Council;

"set leader" means an employee who is responsible for the work executed by the employees composing a set or team under his charge and who takes an active part in the operation of a set;

"set of workers" (sometimes referred to as a "set") means a team of employees numbering three or more, engaged in performing sectional operations in the making up of garments, usually under the direction of a leader;

"shop steward" means an employee at any establishment who has been duly elected as a shop steward in terms of the constitution of the trade union and who has been recognised by the employer as a shop steward;

"short-time" means a temporary reduction in the number of ordinary weekly hours of work in an establishment due to slackness of work or other exigencies of trade;

"storeman" means an employee in general charge of stores and/or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or a warehouse and/or delivering goods from a store or warehouse to the consuming departments in an establishment or for despatch;

"supervisor (clothing)" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to the care of such employee in a factory or a department of a factory in the Clothing and/or Garment Knitting Sectors of the Industry;

"supervisor (millinery)" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to the care of such employee in a factory or a department of a factory in the Millinery Sector of the Industry;

"task-work" means the setting by an employer (or his representative) to an employee of a stated number of garments or parts of garments to be completed by such employee within a specified time;

"tie-cutter" means an employee engaged in marking-in and/or cutting ties by hand or machine;

"tracer" means an employee who traces master lays or traces around patterns which have already been positioned by the lay-maker;

"trade union funds", without limiting the generality of its meaning, includes trade union subscriptions and levies;

"traveller's driver" means an employee accompanying the traveller on his journey and assisting the traveller in driving and in packing, unpacking and displaying of samples;

"trimmer (clothing)" in the clothing section means an employee engaged in marking-in and/or cutting linings and/or canvases;

"trimmer (millinery)" means an employee who is engaged exclusively in the application of trimming to a ready blocked, wired and shaped hat and who may cut materials by hand or machine in a Millinery Establishment;

"trimming", for the purposes of the Millinery Sector of the Industry, means the application of lining, elastic, ribbon, flowers and veiling in accordance with a given model;

"twilight shift" means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

"twilight shift worker" means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

"underpresser" means an employee, other than a presser, employed in pressing processes, including the pressing of pockets and seams of crutch linings of completed trousers, but excluding ironing processes;

"unladen mass" means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by

F -20

law to issue licences in respect of motor vehicles: Provided that in the case of a two or three-wheeled motor cycle, motor scooter or auto-cycle or a cycle fitted with an auxiliary engine the unladen mass shall be deemed not to exceed 1 360kg;

"wage" means the amount of money paid to an employee in terms of clause 4(1), read with clause 4(10), in respect of his ordinary hours of work as specified in Clause 9: Provided that

- (i) if an employer regularly pays an employee in respect of such ordinary hours of work, an amount higher than that specified in clause 4(1), read with clause 4(10), it means such higher amount;
- (ii) the first proviso shall not be construed so as to refer to, or include, such remuneration which an employee who is employed on any basis provided for in clause 7 received over and above the amount which he would have received had he not been employed on such basis;

"watchman or caretaker (clothing)" means an employee who is engaged in guarding premises, buildings or other property in the Clothing and/or Garment Knitting Sectors of the Industry;

"watchman or caretaker (millinery)", means an employee who is engaged in guarding premises, buildings or other property in the Millinery Sector of the Industry.

In classifying an employee for the purposes of this part of the Agreement, he shall be deemed to be in that class in which he is wholly or mainly engaged.

4: WAGES

- (1) (a) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the undermentioned classes of employees employed at Clothing and/or Garment Knitting establishments shall be as follows:

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
Part A - Cutting Department					
	Head Cutter	1687.00	1349.50	1694.00	1355.00
	Pattern Maker:				
(a)	Qualified	1687.00	1349.50	1694.00	1355.00
(b)	Learner				
	First year				
	First six months of experience	945.00	756.00	948.50	759.00
	Second six months of experience	1043.50	835.00	1047.00	837.50
	Second year				
	First six months of experience	1141.50	913.00	1147.00	917.50
	Second six months of experience	1246.50	997.00	1253.00	1002.50
	Third year				
	First six months of experience	1359.50	1087.50	1365.00	1092.00
	Next four months of experience	1467.50	1174.00	1474.00	1179.00

F -21

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	Thereafter, the wage specified in (a), i.e.	1687.00	1349.50	1694.00	1355.00
Pattern Grader					
(a)	Qualified	1361.00	1089.00	1366.50	1093.00
(b)	Learner				
	First year				
	First six months of experience	888.50	711.00	893.50	715.00
	Second six months of experience	945.00	756.00	948.50	759.00
	Second year				
	First six months of experience	1000.50	800.50	1006.00	805.00
	Second six months of experience	1072.00	857.50	1077.00	861.50
	Third year				
	First six months of experience	1141.50	913.00	1147.00	917.50
	Next four months of experience	1215.50	972.50	1221.50	977.00
	Thereafter, the wage specified in (a), i.e.	1361.00	1089.00	1366.50	1093.00
Cutter, lay-maker:					
(a)	Qualified	1313.00	1050.50	1317.50	1054.00
(b)	Learner				
	First year				
	First six months of experience	797.00	637.50	801.50	641.00
	Second six months of experience	877.50	702.00	881.50	705.00
	Second year				
	First six months of experience	957.00	765.50	962.00	769.50
	Second six months of experience	1047.00	837.50	1053.00	842.50
	Third year				
	First four months of experience	1148.50	919.00	1154.50	923.50
	Thereafter, the wage specified in (a), i.e.	1313.00	1050.50	1317.50	1054.00
Interlining cutter, trimmer, leather cutter and tie cutter					
(a)	Qualified	946.00	757.00	950.00	760.00
(b)	Learner				
	First year				
	First six months of experience	710.00	568.00	713.00	570.50
	Second six months of experience	752.50	602.00	756.00	605.00
	Second year				
	First six months of experience	792.50	634.00	796.00	637.00
	Second six months of experience	834.00	667.00	838.50	671.00
	Third year				
	First four months of experience	875.50	700.50	878.50	703.00
	Thereafter, the wage specified in (a), i.e.	946.00	757.00	950.00	760.00
(c)	If advanced to learner cutter:				
	First six months from date of advancement	1025.50	820.50	1030.50	824.50
	Second six months from date of advancement	1148.50	919.00	1154.50	923.50
	Thereafter, the wage specified for a qualified cutter, i.e.	1313.00	1050.50	1317.50	1054.00
Layer-up:					
(a)	Qualified	815.50	652.50	819.00	655.00

F -22

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
(b)	Learner				
	First year				
	First six months of experience	687.00	549.50	689.50	551.50
	Second six months of experience	710.00	568.00	713.00	570.50
	Second year				
	First six months of experience	742.00	593.50	745.50	596.50
	Thereafter, the wage specified in (a), i.e.	815.50	652.50	819.00	655.00
(c)	If advanced to learner cutter:				
	First six months from date of advancement	815.50	652.50	819.00	655.00
	Second six months from date of advancement	957.00	765.50	962.00	769.50
	Third six months from date of advancement	1047.00	837.50	1053.00	842.50
	Fourth six months from date of advancement	1148.50	919.00	1154.50	923.50
	Thereafter, the wage specified for a qualified cutter, i.e.	1313.00	1050.50	1317.50	1054.00
(d)	If advanced to learner interlining cutter, learner trimmer, learner leather cutter or learner tie cutter:				
	First six months from date of advancement	815.50	652.50	819.00	655.00
	Second six months from date of advancement	875.50	700.50	878.50	703.00
	Thereafter, the wage specified for a qualified interlining cutter, trimmer, leather cutter or tie cutter, i.e.	946.00	757.00	950.00	760.00
(e)	If advanced to fitter-up:				
	First six months from date of advancement	815.50	652.50	819.00	655.00
	Second six months from date of advancement	845.50	676.50	848.50	679.00
	Third six months from date of advancement	888.50	711.00	893.50	715.00
	Fourth six months from date of advancement	946.00	757.00	950.00	760.00
	Thereafter, the wage specified for fitter-up, i.e.	1043.50	835.00	1047.00	837.50
	Clicker:				
(a)	Qualified	976.50	781.00	980.50	784.50
(b)	Learner				
	First year	731.50	585.00	735.00	588.00
	Second year	834.00	667.00	838.50	671.00
	Thereafter, the wage specified in (a) i.e.	976.50	781.00	980.50	784.50
	Tracer:				
(a)	Qualified	915.50	732.50	919.00	735.00
(b)	Learner				
	First year				
	First six months of experience	731.50	585.00	735.00	588.00
	Second six months of experience	783.00	626.50	787.00	629.50
	Second year				
	First six months of experience	828.50	663.00	832.00	665.50
	Thereafter, the wage specified in (a), i.e.	915.50	732.50	919.00	735.00

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
Part B - Factory Operatives					
Clothing machine mechanic:					
(a)	Qualified	1687.00	1349.50	1694.00	1355.00
(b)	Learner				
	First year				
	First six months of experience	945.00	756.00	948.50	759.00
	Second six months of experience	1043.50	835.00	1047.00	837.50
	Second year				
	First six months of experience	1141.50	913.00	1147.00	917.50
	Second six months of experience	1246.50	997.00	1253.00	1002.50
	Third year				
	First four months of experience	1359.50	1087.50	1365.00	1092.00
	Second four months of experience	1467.50	1174.00	1474.00	1179.00
	Thereafter, the wage specified in (a), i.e.	1687.00	1349.50	1694.00	1355.00
Clothing technician:					
(a)	Qualified	1687.00	1349.50	1694.00	1355.00
(b)	Learner				
	First year				
	First six months of experience	945.00	756.00	948.50	759.00
	Second six months of experience	1043.50	835.00	1047.00	837.50
	Second year				
	First six months of experience	1141.50	913.00	1147.00	917.50
	Second six months of experience	1246.50	997.00	1253.00	1002.50
	Third year				
	First six months of experience	1359.50	1087.50	1365.00	1092.00
	Next four months of experience	1467.50	1174.00	1474.00	1179.00
	Thereafter, the wage specified in (a), i.e.	1687.00	1349.50	1694.00	1355.00
Grade A employee:					
(a)	Qualified	1043.50	835.00	1047.00	837.50
(b)	Learner				
	First year				
	First six months of experience	734.00	587.00	737.00	589.50
	Second six months of experience	791.50	633.00	794.50	635.50
	Second year				
	First six months of experience	845.50	676.50	848.50	679.00
	Second six months of experience	888.50	711.00	893.50	715.00
	Third year				
	First four months of experience	946.00	757.00	950.00	760.00
	Thereafter, the wage specified in (a), i.e.	1043.50	835.00	1047.00	837.50
Grade B employee:					
(a)	Qualified	891.50	713.00	895.50	716.50
(b)	Learner				
	First year				
	First six months of experience	723.00	578.50	727.00	581.50

F -24

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
	Second six months of experience	761.50	609.00	764.00	611.00
	Second year				
	First six months of experience	799.50	639.50	803.00	642.50
	Thereafter, the wage specified in (a), i.e.	891.50	713.00	895.50	716.50
(c)	If advanced to Grade A employee:				
	First six months from date of advancement	891.50	713.00	895.50	716.50
	Second six months from date of advancement	917.50	734.00	922.00	737.50
	Third six months from date of advancement	946.00	757.00	950.00	760.00
	Thereafter, the wage specified for a qualified Grade A employee, i.e.	1043.50	835.00	1047.00	837.50
	Grade C employee:				
(a)	Qualified	791.50	633.00	794.50	635.50
(b)	Learner				
	First year				
	First six months of experience	709.00	567.00	712.00	569.50
	Second six months of experience	729.00	583.00	732.50	586.00
	Thereafter, the wage specified in (a), i.e.	791.50	633.00	794.50	635.50
(c)	If advanced to Grade B employee:				
	First six months from date of advancement	791.50	633.00	794.50	635.50
	Second six months from date of advancement	799.50	639.50	803.00	642.50
	Thereafter, the wage specified for a qualified Grade B employee, i.e.	891.50	713.00	895.50	716.50
	Underpresser, blocker:				
(a)	Qualified	799.50	639.50	803.00	642.50
(b)	Learner				
	First year				
	First six months of experience	687.00	549.50	689.50	551.50
	Second six months of experience	710.00	568.00	713.00	570.50
	Second year				
	First six months of experience	742.00	593.50	745.50	596.50
	Thereafter, the wage specified in (a), i.e.	799.50	639.50	803.00	642.50
(c)	If advanced to learner presser:				
	First six months from date of advancement	799.50	639.50	803.00	642.50
	Second six months from date of advancement	946.00	757.00	950.00	760.00
	Thereafter, the wage specified for a qualified Grade A employee, i.e.	1043.50	835.00	1047.00	837.50
Part C - Clerical employees					
Clerk					
(a)	Qualified	1148.50	919.00	1154.50	923.50

DESCRIPTION		GROUP A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	GROUP B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
		R	R	R	R
(b)	Learner				
	First year	847.50	678.00	851.00	681.00
	Second year	921.50	737.00	926.00	741.00
	Third year				
	First four months of experience	1007.00	805.50	1011.00	809.00
	Thereafter, the wage specified in (a), i.e.	1148.50	919.00	1154.50	923.50
Factory Clerk					
(a)	Qualified	862.50	690.00	867.00	693.50
(b)	Learner				
	First year	687.00	549.50	689.50	551.50
	Second year	731.50	585.00	735.00	588.00
	Third year				
	First four months of experience	791.50	633.00	794.50	635.50
	Thereafter, the wage specified in (a), i.e.	862.50	690.00	867.00	693.50
Part D - General					
	Boiler attendant	818.50	655.00	822.50	658.00
	Despatch packer	845.50	676.50	848.50	679.00
	General Worker	791.50	633.00	794.50	635.50
	Labourer	799.50	639.50	803.00	642.50
	Motor vehicle driver of a vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle -				
(a)	does not exceed 1 360 kg	845.50	676.50	848.50	679.00
(b)	exceeds 1 360 but not 2 720 kg	877.50	702.00	881.50	705.00
(c)	exceeds 2 720 kg	1000.50	800.50	1006.00	805.00
	Supervisor, quality controller and instructor	1072.00	857.50	1077.00	861.50
	Traveller's driver	877.50	702.00	881.50	705.00
	Watchman or caretaker, whose ordinary hours of work are -				
(a)	less than 60 hours per week	912.00	729.50	916.50	733.00
(b)	60 hours per week	957.00	765.50	962.00	769.50
NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by 7% Across-the-Board.					

- (1) (b) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the undermentioned classes of employees, employed at Millinery Establishments shall be as follows:

F -26

DESCRIPTION		Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
		R	R	R	R
Blocker					
(a)	Qualified	832.50	666.00	836.50	669.00
(b)	Learner				
	First year				
	First six months of experience	576.00	461.00	579.00	463.00
	Second six months of experience	643.00	514.50	645.50	516.50
	Second year				
	First six months of experience	703.50	563.00	707.50	566.00
	Second six months of experience	769.00	615.00	772.50	618.00
	Thereafter, the wage specified in (a), i.e.	832.50	666.00	836.50	669.00
Chopper-Out (Millinery)/Trimmer (Millinery)/Packer (Millinery):					
(a)	Qualified	687.50	550.00	690.00	552.00
(b)	Learner				
	First year				
	First six months of experience	576.00	461.00	579.00	463.00
	Second six months of experience	598.50	479.00	602.00	481.50
	Second year				
	First six months of experience	619.50	495.50	622.50	498.00
	Second six months of experience	643.50	515.00	646.50	517.00
	Third year				
	First four months of experience	664.50	531.50	668.00	534.50
	Thereafter, the wage specified in (a), i.e.	687.50	550.00	690.00	552.00
Clerk					
(a)	Qualified	1 148.50	919.00	1 154.50	923.50
(b)	Learner				
	First year				
	Second year	847.50	678.00	851.00	681.00
	Third year	921.50	737.00	926.00	741.00
	First four months of experience	1 007.00	805.50	1 011.00	809.00
	Thereafter, the wage specified in (a), i.e.	1 148.50	919.00	1 154.50	923.50

DESCRIPTION		Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
		R	R	R	R
General Worker (Millinery)		680.00	544.00	683.00	546.50
Grade 1 Employee (Millinery):					
(a)	Qualified	673.00	538.50	675.50	540.50
(b)	Learner				
	First year				
	First six months of experience	576.00	461.00	579.00	463.00
	Second six months of experience	599.50	479.50	603.50	483.00
	Second year				
	First six months of experience	634.00	507.00	636.50	509.00
	Thereafter, the wage specified in (a), i.e.	673.00	538.50	675.50	540.50
Milliner:					
(a)	Qualified	727.50	582.00	731.00	585.00
(b)	Learner				
	First year				
	First six months of experience	576.00	461.00	579.00	463.00
	Second six months of experience	612.50	490.00	614.50	491.50
	Second year				
	First six months of experience	614.00	491.00	616.50	493.00
	Second six months of experience	642.50	514.00	645.00	516.00
	Third year				
	First six months of experience	671.00	537.00	673.50	539.00
	Next four months of experience	703.50	563.00	707.50	566.00
	Thereafter, the wage specified in (a) i.e.	727.50	582.00	731.00	585.00
Millinery Machinist:					
(a)	Qualified	735.00	588.00	738.50	591.00
(b)	Learner				
	First year				
	First six months of experience	576.00	461.00	579.00	463.00
	Second six months of experience	628.00	502.50	631.00	505.00
	Second year				
	First six months of experience	665.50	532.50	669.50	535.50

F -28

DESCRIPTION		Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
		R	R	R	R
	Thereafter, the wage specified in (a), i.e.	735.00	588.00	738.50	591.00
	Motor vehicle driver of a vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle is as follows -				
(a)	does not exceed 2268 kg	872.50	698.00	877.00	701.50
(b)	exceeds 2268	922.00	737.50	926.50	741.00
	Plain Sewer (Millinery):				
(a)	Qualified	687.50	550.00	690.00	552.00
(b)	Learner				
	First year				
	First six months of experience	576.00	461.00	579.00	463.00
	Second six months of experience	606.50	485.00	610.00	488.00
	Second year				
	First six months of experience	646.00	517.00	648.50	519.00
	Thereafter, the wage specified in (a), i.e.	687.50	550.00	690.00	552.00
	Supervisor (Millinery)	985.50	788.50	990.00	792.00
	Watchman or Caretaker (Millinery)	994.50	795.50	998.50	799.00
NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by 7% Across-the-Board.					

(2) New Employees

2.1 New employees shall be paid a weekly wage of 70% of the rate in metro areas, subject to the following provisions:

2.1.1 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a period of 3 years.

2.1.2 The provision is only applicable to compliant companies.

2.1.3(a) The new entry-level wage provision will continue in force and effect as an industry-wide provision after the 31st August 2014 if there has been an increase in employee strength of compliant employers in the industry of at least 15% as at 31st March 2014, monitored on a bi-annual basis.

- (b) The bi-annual benchmark monitoring shall be measured against the following schedule of new employment growth:
- | | |
|-------------------|--------------|
| 1 March 2012: | 3% increase |
| 1 September 2012: | 6% increase |
| 1 March 2013: | 9% increase |
| 1 September 2013: | 12% increase |
| 1 March 2014: | 15% increase |
- 2.1.4 It is only applicable to those compliant companies who were in existence and operational as at 1 June 2011.
- 2.1.5 All other provisions of the main agreement shall be applicable to new employees.
- 2.1.6 The closed shop shall be applicable to all new employees.
- 2.1.7(a) The employee strength to determine whether or not there has been an increase in employee strength will be measured by comparing the employee strength of compliant employers whose businesses are registered with the bargaining council on the 1st June 2011, as per clause 2.1.3, and to that of the employee strength of compliant employers whose businesses are registered with the bargaining council on the 31st March 2014, i.e. a period of 30 months following the implementation of this *Agreement*.
- (b) In the event that the employee strength does not increase as per the provisions of this *Agreement* and more specifically, the provisions of *Clause 2.1.3* above, the provisions of the new-entry wage provision will terminate.
- (c) Upon such termination of the application of the new entry level wage provision, the wages of all employees earning the new-entry wage will be increased to the full applicable gazetted wage for all job categories from the first pay week following the 31st August 2014, unless the parties during the 2014/2015 round of annual or other negotiations agree otherwise or agree to an alternative to address any further job losses or the absence of job growth in the industry.
- 2.1.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to employ employees at the rates specified in sub-clause 2.1.3 (a) above.
- 2.1.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 2.1.10 Qualified employees shall be employed at the qualified new entry rate, subject to sub-clause 2.1.1.
- 2.1.11 Effective 1st September 2011, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.

(3) **Incentivised Wage Rates**

The 'new entry wage rates' provisions as specified in clause 4 of the 2011/2012 party-to-party substantive agreement shall be abolished and replaced with the following incentivised wage rates provisions, applicable to new employees only:

- 3.1 With effect 1 September 2013, new employees shall be paid a guaranteed wage of no less than 80% of the normal qualified gazetted wage rate applicable to current employees, subject to the following provisions:
- 3.2 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a minimum period of 3 years, unless the applicant employee agrees otherwise with his/her prospective employer.
- 3.3 The guaranteed wage rate as specified in sub-clause 3.1 above shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the qualified rate, provided the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1 September 2012, once a national framework agreement governing the incentive portion has been agreed.
- 3.4 The provisions of clause 3 of this circular is only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.
- 3.5 All other provisions of the industry's Main Agreement shall be applicable to new employees.
- 3.6 The closed shop shall be applicable to all new employees.
- 3.7 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to re-employ employees at the rates specified in sub-clause 3.1 above
- 3.8 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 3.9 Qualified employees shall be employed at the qualified rate, subject to sub-clause 3.2 above.
- 3.10 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party to party agreement, which was subsequently extended to non-parties and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus the annual increases, and subject to the companies at which they are employed meeting the compliant employment growth targets as set out in the 2011/2012 wage agreement.
- 3.11 Effective 1st September 2012, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.

- 3.12 The parties shall negotiate a national framework agreement at national bargaining council level, to give enabling effect to the plant level incentivised wage component as contemplated in sub-clause 3.3 of this agreement. This shall be finalised within a period of 4 months with effect from 1 October 2012 (excluding the annual shutdown period). Thereafter, companies who qualify for the provisions of clause 4 of the substantive agreement and who wish to implement it shall have a 2 month period to conclude plant-level incentive arrangements in terms of the provisions of the national framework agreement.
- 3.13 The deadlock breaking mechanism for the national framework agreement is either binding interest arbitration or, at the end of the prescribed period, the entire 80% dispensation falls away, unless other forms of deadlock breaking mechanisms are agreed between the parties.
- 3.14 Should the 80% dispensation fall away in consequence of the provision in sub-clause 3.13 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreement rate.
- 3.15 The deadlock breaking mechanism for operationalising the incentive component at plant level shall consist firstly of a facilitation process by a panel of experts jointly appointed by the employer and trade union parties to this agreement and if not resolved, by an advisory award by the panel, unless other forms of deadlock breaking mechanisms are agreed to between the parties.
- 3.16 The parties agree that the only outstanding issue pertaining to the national incentivised framework agreement is the deadlock breaking mechanism. The Parties agree to finalise this matter within two (2) weeks from the date of signing this agreement, failing which the provision of sub-clause 3.13 above will become effective.
- (4) **Set leaders:** In addition to the wages computed in term of sub - clause (1) of this clause, any employee when called upon to perform the duties of a set leader shall receive and be paid an additional R4 per week whilst so employed.
- (5) **Basis of contract:** For the purposes of this clause the contract of employment of an employee, other than a casual employee and a twilight shift worker, shall be on a weekly basis, and an employee shall be paid in respect of a week not less than the full weekly wage prescribed in subclause (1), read with subclause (8) and subclause (12) for an employee of his class, whether he has in that week worked the maximum number of ordinary hours of work applicable to him in terms of clause 9, or less, and subject to the provisions of clause 30 of this part of the Agreement, each contract of service shall be deemed to have been continuous from the time the employee entered the employer's service until the time such service is legally terminated: Provided that the remuneration payable to a twilight shift worker shall accrue at an hourly rate.
- (6) **Incremental dates:** An employer shall pay increases due to his employees during each calendar year on the following basis;
- (a) All employees who qualify for an increase during the period 1 January to 31 March of the calendar year shall be granted such increases with effect from the pay-week in which 15 February of such year falls. When an employee is not in employment during the said pay-week he shall become entitled to the increase with effect from the date he is employed.
- (b) Likewise and in the same manner, all increases which become due during the periods 1 April to 30 June, 1 July to 30 September and 1 October to 31 December of each calendar year shall be granted to employees with effect

from the pay-week in which 15 May, 15 August and 15 November fall within the respective periods.

- (c) In calculating whether an employee qualifies for an increment, all periods of absence from work shall be counted, except any absence without pay for a continuous period in excess of four consecutive pay-weeks and in respect whereof full particulars of the name of the employee and the period of absence have been advised to the Regional Chamber within 14 days of the employee's resuming work.
- (7) Except with the approval of the Regional Chamber or unless otherwise provided for herein, an employee transferred from one occupation to another for which wages are prescribed in this part of the Agreement, either with the same employer or if commencing service with another employer, shall be paid the wages prescribed in respect of the experience such an employee has had in the Industry, irrespective of the occupation in which such experience has been obtained.
- (8) **Differential rates:** An employer who requires or permits a member of one class of his employees to perform for longer than one hour in the aggregate on any day, either in addition to his own work or in substitution therefore, 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 wage higher than that of his own class;
- is prescribed in subclause (1) shall pay such employee in respect of that day:
- (i) in the case referred to in paragraph (a), not less than one-fifth of the higher weekly wage prescribed in subclause (1); and
- (ii) in the case referred to in paragraph (b), not less than one-fifth of the highest weekly wage prescribed in subclause (1) for the higher class;
- Provided that where the difference between classes is, in terms of subclause (1), based on experience, the provisions of this subclause shall not apply.
- (9) Subject to the provisions of clauses 5(4) and 12, an employee, other than a casual employee and a twilight shift worker, shall be paid the full weekly wage prescribed in subclause (1), read with subclause (10), for an employee of his class, whether he has worked full time or less.
- (10) **Casual employee:** A casual employee shall be paid in respect of every day or part of a day of employment not less than one fifth of the weekly wage prescribed for a labourer in subclause (1) read with subclause (12).
- (11) **Shift Allowance:** In addition to the wage specified in sub-clause (1), read with sub-clause (10), a normal shift worker shall, in respect of his shift hours worked in any week, be paid an additional 12,5% on such wage.
- (12) **Annual Bonus:** Each employee shall be paid an annual bonus on the day of his employer's annual closure in December of each year, equivalent to 2,0% of his annual basic prescribed wage (excluding overtime earnings and production bonuses) calculated from 1 January to 31 December. A pro rata share thereof shall be paid to an employee who leaves employment before 31 December.

The bonus is inclusive of and not additional to any annual bonus paid by an employer and a shop steward may not be prejudiced in respect of annual bonus earnings for time off authorised by his employer, in attending to union business.

- (13) Notwithstanding anything to the contrary herein, the wage of an employee who, immediately prior to the date on which this part of the Agreement comes into operation, is in receipt of a wage higher than that specified for the class of work in which he is engaged shall, with effect from the date on which this part of the Agreement comes into operation, be increased by an amount not less than the difference between the wage as agreed by the Parties as at 1 September 2013 and the wage specified for the same class of work in the agreement in force immediately prior to that date.
- (14) **2001 Allowance:** In addition to the wage specified in subclause (1) (a) each employee employed at Clothing and/or Garment Knitting Establishments and for whom wages are prescribed in this part of the Agreement shall be paid an allowance equal to 1,28% of the wage prescribed in the Agreement published under Government Notice No R.85 of 26 January 2001 plus an amount of 20 cents: Provided that this sub-clause shall not apply to an employee who, by virtue of the operation of clause 1(2)(b), previously fell outside the provisions of the Agreement published under Government Notice No R.85 of 26 January 2001 and provided further that in the event of an employee who has been exempted from contributing to the Cape Clothing Industry Provident Fund, this allowance will be reduced to an amount of 20 cents i.e. discarding the 1,28% portion thereof.

5: PAYMENT OF WAGES

- (1) Nothing in this part of the Agreement shall operate to reduce the wage which was being paid immediately prior to or to which any employee was entitled at the date of the commencement of this part of the Agreement whilst such employee is employed by the same employer. The provisions of this subclause shall also apply in the case of any employee whose services are terminated by such employer subsequent to the date of commencement of this part of the Agreement and who is re-engaged by such employer.

For the purposes hereof, 'Agreement' shall include any amendment thereto.

- (2) (a) The wages due to an employee, other than a normal shift worker or a casual employee, shall be paid in cash each Friday during working hours, but not later than 17h30, at the place and time specified in the notice posted up in the establishment.

Any time which may elapse after the normal hours of work and the time at which payment is made shall be deemed to be overtime. If a pay-day falls upon a public holiday, payment shall be made during working hours on the day preceding such holiday.

In the case of a normal shift worker the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during the usual office hours of the establishment, but not later than twenty-four hours after the usual pay day.

In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.

- (b) Employees engaged upon a monthly basis shall be paid not later than the last day in each calendar month, or on the termination of employment if this should take place before the ordinary pay-day of the employee.

- (c) Where the contract of employment is terminated on any working day other than the ordinary pay-day in the establishment, all wages or other moneys due to the employee shall be paid immediately upon termination of employment, and where this is not done the employee shall also be entitled to his normal wages for any period up to the time at which payment is made.
 - (d) A casual employee shall be paid in cash for each day worked not later than the usual closing time of the establishment.
- (3) **Wage envelopes:** Any wages must be handed to employees in sealed envelopes which bear the name of the employee, his factory number, the name of the employer, the number of hours worked by the employee, his prescribed weekly wage rate, deductions made in terms of subclause (4) and clause 12 (i.e. short-time), and the period in respect of which payment is made.
- (4) No deductions of any description, other than the following, shall be made from the amount due to an employee:
- (a) except where otherwise provided in this part of the Agreement, whenever an employee is absent from work and such absence is not at the request or on the instructions of his employer, a pro rata deduction for actual time lost;
 - (b) with the written consent of the employee, deductions for savings and/or holiday funds: Provided that the commencement or continuance of a savings and/or holiday fund is subject to the approval of the Regional Chamber, after the employer has agreed to deposit such moneys deducted from his employee's wages in a trust fund under the supervision of the Regional Chamber;
 - (c) levies in terms of clause 22, Health Care Fund contributions in terms of clause 26 of this part of the Agreement, and provident fund contributions in terms of clause 6 of the Provident Fund Agreement;
 - (d) any amount paid by an employer compelled by law, ordinance or legal process to make payment on behalf of an employee;
 - (e) where scissors have been provided by an employer to his employee, a weekly installment not exceeding R2,00 may be deducted until the cost incurred by the employer has been repaid, but in the event of the employee returning the scissors to his employer he shall be entitled to a refund of the total amount he has paid;
 - (f) deductions in respect of tea (or other beverage) in terms of clause 13 of this part of the Agreement;
 - (g) where no work is available to an employee on account of breakdown of machinery or other cause beyond the control of the management, the employer may make a pro rata deduction for any time lost in excess of two hours;
 - (h) deductions for contributions to trade union funds;
 - (i) deductions for cash advanced against wages;
 - (j) deductions in respect of repayments on housing loans provided for in clause 8 (4) of the Provident Fund Agreement of the Regional Chamber;
 - (k) where overalls have been provided by an employer to his employee at his request, a weekly installment not exceeding R2,00 may be deducted until the cost thereof has been repaid, but in the event of the employee leaving or

absconding before the full cost of an overall has been paid, the outstanding amount may be deducted from his wages;

- (l) deductions for contributions to pension funds approved by the Registrar of Pension Funds;
 - (m) deductions in respect of payments to local authorities for housing loans, rentals and rates;
 - (n) deductions from the wages of monthly-paid employees in respect of life insurance premiums;
 - (o) deductions in respect of clipcards for bus or train travel.
- (5) Employers who supply their employees with goods of any kind whatsoever, shall not deduct the amounts owing thereon from the wage of such employees. Wages must at all times be paid in full except as is provided for in subclause (4) and clause 12 and no deduction shall be made in respect of goods that may have been accidentally spoilt during the manufacturing process.
- (6) Where work of any nature whatsoever is performed in an establishment by employees organised in sets or teams, each individual employee in the said sets or teams shall be paid his wage by the employer or his representative in the establishment where the work is performed.
- (7) No employer shall charge, nor shall he accept, any premium, monetary or other compensation 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.
- (8) Whenever work ceases or is interrupted in the whole or part of an establishment owing to damage caused by fire, storm or flooding, an employer shall pay all employees affected thereby wages up to a maximum of two weeks: Provided that such payment shall include any payment in respect of notice of termination of service which may be due in terms of clause 18 of this part of the Agreement; Provided further that where work in a part or the whole of the establishment is resumed within two weeks from the date on which work was so ceased or interrupted, the payment due shall be only in respect of the actual time lost by the employees affected.
- The provisions of this subclause shall also apply to any employee who as at the date of such fire, storm or flood is employed on trial in terms of clause 18 (8) of this part of the Agreement.
- (9) Subclause (8) shall not apply to a casual employee.

6: TIME RECORDS

- (1) Every employer shall provide, to the satisfaction of the Regional Chamber, a semi-automatic time recording clock or other recording system and shall establish beyond reasonable doubt the actual time each individual employee has attended at the establishment.
- (2) Every employee shall, unless prevented by sickness or other unavoidable cause, register day by day the actual periods of his attendance at the establishment.
- (3) Every employee shall register in person, in accordance with the method employed in the establishment, and no employee may register for any other employee in such establishment.

- (4) All time cards or other types of records shall, in accordance with the requirements of section 205(1) and (2) of the Act, be kept for a period of three years subsequent to the date of the record and on request shall be available for inspection by the designated agent of the Council or Regional Chamber.

7: WAGE INCENTIVES, PIECE-WORK AND TASK-WORK

- (1) Task-work is prohibited and employees who are required to produce a given number of units of production shall be placed under a piece-work or incentive system as provided for in this clause.
- (2) No employer shall employ any employee on piece-work or any other form of wage incentive except in accordance with the following conditions:
- (a) No employee shall be paid in any week less than the minimum wage to which he would have been entitled in terms of clause 4 of this part of the Agreement if he had been employed purely as a time-worker.
 - (b) The Regional Secretary of the Regional Chamber must within seven days of the introduction of any piece-work or other form of wage incentive be notified of the introduction thereof.
 - (c) A schedule of the piece-work rates and, in the case of any other form of wage incentive, a statement clearly illustrating how bonus payments will be calculated, must forthwith be exhibited and kept posted in a conspicuous place readily accessible to the employees and such schedule and/or statement shall be signed in situ by a designated agent of the Council or Regional Chamber.
 - (d) The employees affected by any wage incentive scheme other than straight piece-work shall have the right to elect a works committee of two (or such additional numbers as may be agreed to by the employer) and in the event of a works committee being appointed, full details of the actual operation of the scheme shall be made available to the committee.
 - (e) Full details of the wage incentive scheme showing the operations covered, work values and allowances made in calculating work values, must be maintained by the employer, and where any changes are effected the record of the previous system must be retained for a period of one year after such change.
 - (f) No details of the wage incentive scheme may be changed to reduce the earnings of the employees affected without the consent of the works committee (if any), and in the event of any dispute arising, the matter shall be referred to the Regional Chamber: Provided that this shall not apply to any changes effected during the trial period of three months after the coming into operation of the scheme.

Piece-work rates shall not be reduced without the consent of the Regional Chamber.
 - (g) No wage incentive system may be continued for a period exceeding one month after a trial period of three months without a certificate of permission having been obtained from the Regional Chamber.

8: PROPORTION OR RATIO OF EMPLOYEES

- (1) Where an employer employs four or more cutters in any establishment he shall employ one head cutter at a wage of not less than the wage prescribed in clause 4(1).

- (2) Where an employer is limited liability company or a close corporation or is a partnership, no director or member or other officer of such company or close corporation or partnership shall be deemed to be an employee for ratio purposes.

**9: ORDINARY HOURS OF WORK, MEAL INTERVALS
AND REST INTERVALS**

- (1) **Ordinary hours of work:** An employer shall not require or permit an employee to work more ordinary hours than:

- (a) In the case of an employee, other than a normal shift worker or a twilight shift worker, boiler attendant, casual employee and watchman or caretaker:
- (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Monday to Friday, inclusive;
 - (ii) 8½ hours on any day between 07h30 and 18h00.
- (b) In the case of a normal shift worker:
- (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Sunday to Saturday, inclusive;
 - (ii) nine hours on any day where two shifts are employed daily and eight hours on any day where three shifts are employed daily;

Provided that an employer may make mutual arrangements with his normal shift workers to work 42½ hours on night shift, excluding meal intervals, but including rest intervals, in any week from Monday to Thursday (four-day week).

Provided further that no employer may require employees to work as normal shift workers without giving the Council at least 15 working days notice of his intention to work shifts, and without consulting the Trade Union in this regard.

- (c) In the case of boiler attendants, the weekly hours may be 46 and the daily hours nine and a quarter.
 - (d) In the case of watchmen or caretakers, the weekly hours may be 60 and the daily hours 12 (five-day week) or 10 hours (six-day week).
 - (e) In the case of casual employees, the weekly hours may be 25½ and the daily hours 8½.
 - (f) In the case of a twilight shift worker, the daily hours may only be any time between 16h30 and 23h00 on any day from Monday to Friday.
- (2) **Hours of work to be consecutive:** All working hours in any day shall, except for meal intervals and rest intervals as provided for in this clause, be consecutive.
- (3) **Rest intervals:**
- (a) **Employees not engaged upon a conveyor apparatus:** Every employer shall grant to each of his employees a rest interval of not less than:
 - (i) 15 minutes as near as practicable to the middle of each morning work period;

- (ii) 10 minutes as near as practicable to the middle of each afternoon work period;

during which such employee shall not be required or permitted to perform any work, and such interval shall be deemed to be part of the ordinary hours of work.

- (b) **Employees engaged on a conveyor apparatus:** Employees engaged on work in conjunction with a conveyor apparatus shall be given suitable rest intervals during working hours, amounting in all to not less than 30 minutes daily. All such rest periods shall be reckoned as part of the employee's working hours but no work whatever shall be performed during such rest intervals by any employee engaged upon this type of operation.

Provided that this sub-clause shall not apply to a traveller's driver, a motor vehicle driver, a watchman or caretaker, or an employee engaged in delivering goods or messages outside the establishment of his employer: Provided further that where three normal shifts are employed daily or a twilight shift of longer than three hours duration is employed in an establishment, such rest intervals need not be granted to a normal or a twilight shift worker, provided he is supplied free of charge with one cup of tea as near as practicable to the middle of each normal or twilight shift, as the case may be, such tea to be taken while at his post.

- (4) **Meal intervals:** An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than one hour during which interval such employee shall not be required or permitted to perform any work: Provided that:
 - (a) periods of work interrupted by intervals of less than one hour shall be deemed to be continuous;
 - (b) if such interval be for longer than one hour, the period in excess of one hour shall be deemed to be hours of work;
 - (c) where two or three shifts are employed daily in any establishment, a normal shift worker shall be granted two meal intervals of not less than 15 minutes per shift or one meal interval of not less than 30 minutes per shift during which intervals such employee shall not be required or permitted to perform any work;
 - (d) with regard to employees other than normal shift workers an employer may conclude an arrangement with his employees to shorten such employees' meal intervals to not less than 30 minutes daily;
 - (e) this sub-clause shall not apply to a twilight shift worker.
- (5) **Savings:** The provisions of this clause shall not apply to traveller's drivers and watchmen or caretakers: Provided that in the case of a watchman or caretaker he shall not be required or permitted to work for more than six days consecutively without being granted a day off duty on full pay: Provided further that the employer may, in lieu of granting his watchman or caretaker any such day off, pay the employee concerned the wage which he would have received if he had not worked on such day, plus an amount of not less than his daily wage in respect of such day not granted. The provisions of subclause (2), (3) and (4) shall not apply to an employee engaged on emergency work or in the overhauling and repair of machinery which cannot be performed during the regular working hours.

(6) **Twilight Shift**

- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:
- (i) Only unemployed people may be recruited for working this shift.
 - (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
 - (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
- (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
 - (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
 - (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.
- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:
- (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
 - (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

10: OVERTIME

- (1) **Overtime:** All time worked by employees other than normal shift workers and twilight shift workers:
- (a) in excess of the ordinary daily hours specified in clause 9(1); or
 - (b) before 07h30 and after 18h00 from Monday to Friday, except in the case of boiler attendants, watchmen, caretakers, canteen employees or employees engaged in cleaning premises;
- shall be deemed to be overtime.
- (c) **Shift workers:** All time worked by normal shift workers in excess of the ordinary daily or weekly hours specified in Clause 9(1)(b) shall be deemed to be overtime.
- (d) **Aggregation of Overtime:** For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause

F -40

9(1) of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
- (ii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
- (iii) time not worked as a result of the employer having declared short time;
- (iv) time not worked as a result of the employee being on authorised shop steward stewards time off; and
- (v) time not worked as a result of any authorised absenteeism.

(2) **Limitation of overtime:**

(a) **Weekly and daily limits:** No employer shall require or permit an employee to work overtime for more than:

- (i) 10 hours in any week;
- (ii) three hours on any day.

(b) **Notice of working overtime to be given to employees:** No overtime in excess of one hour in any day may be required or permitted of an employee unless the employer:

- (i) has given notice thereof to such employee the previous day; or
- (ii) provides such employee with an adequate meal before he has to commence overtime; or
- (iii) pays such employee an allowance of R5.00 to enable the employee to obtain a meal before the overtime is due to commence.

(c) Overtime shall be voluntary.

(d) Before overtime is commenced on any day (Monday to Friday), the employer shall grant his employees a 10 minute paid meal interval (regarded as part of the overtime hours) or an unpaid meal interval of 30 minutes duration, depending on the wishes of the majority of the employees concerned.

(e) An employee shall not be required to work overtime without his consent and an employee shall not be dismissed by reason of his refusal to work overtime.

(3) An employee shall be deemed to be working in the employment of an employer in addition to any period during which he is actually working:

- (a) during any period during which, in accordance with the requirements of his employer, he is present upon or in any premises in which the Industry is being carried on;
- (b) during any period during which he is present upon or in any such premises; and
- (c) during any period during which he is in charge of any vehicle used in the Industry, whether or not it is being driven:

Provided that if it is proved that during any part of any such period as is referred to in paragraph (b) or (c) any such employee did not actually work in his employment, the

presumption established by this subclause shall not apply in respect of that employee in relation to that period.

- (4) Overtime accrues daily and shall be reckoned as time worked outside of the ordinary working hours as specified in Clause 9. All overtime of a lesser period than 15 minutes shall be paid for as a quarter of an hour overtime.
- (5) **Day of rest:** An employer shall grant to each of his shift workers one full day of rest in any week: Provided that if an employer requires or permits such an employee to work on his day of rest, the hours so worked shall be deemed not to be part of the ordinary hours of work specified in Clause 9(1)(b).
- (6) Overtime shall apply to all employees in an establishment, except travellers' drivers.
- (7) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

11: PAYMENT FOR OVERTIME AND WORK ON SATURDAYS, SUNDAYS AND PUBLIC HOLIDAYS

- (1) **Overtime:** An employer shall pay his employee, other than a twilight shift worker, in respect of all overtime worked by him, not less than:
 - (a) in the case of an employee other than a boiler attendant, watchman or caretaker and casual employee, one and a half times his wage divided by 42½ for each hour or part of an hour so worked;
 - (b) in the case of a boiler attendant, one and a half times his wage, divided by 46, for each hour or part of an hour so worked;
 - (c) in the case of a watchman or caretaker, one and a half times his wage, divided by 60, for each hour or part of an hour so worked;
 - (d) in the case of a casual employee, one and a half times his daily wage, divided by 8½, for each hour or part of an hour so worked.
- (2) **Saturday work:**
 - (a) No work shall be performed on any Saturday without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.
 - (b) Subject to paragraph (c), any time worked on a Saturday shall be deemed to be overtime and be paid for as follows:
 - (i) all work performed in excess of 4,25 hours or after 12:00 at a rate of double an employee's hourly wage for every hour or part of an hour so worked;
 - (ii) all other work in accordance with subclause (1).
 - (c) Where an employee is required or permitted to work on a Saturday, his employer shall pay the employee concerned a traveling allowance of not less than R1,75.
 - (d) The provisions of this subclause shall not apply to normal shift workers.
 - (e) A twilight shift worker may not be required to work on a Saturday.
 - (f) A twilight shift worker may not be required to work on a Sunday.

- (3) **Sunday work:** No work shall be performed on a Sunday without the permission of the Regional Chamber, and whenever an employee, other than a normal shift worker, is required or permitted to work on a Sunday, his employer shall either:
- (a) pay the employee:
 - (i) if he so works for a period not exceeding four hours, not less than the ordinary wage payable in respect of the period ordinarily worked by him on a weekday; or
 - (ii) if he so works for a period exceeding four hours, wages, at a rate of not less than double his ordinary rate of pay, in respect of the total period worked on such Sunday, or the wage which is not less than double the ordinary wage payable in respect of the period ordinarily worked by him on a weekday, whichever is the greater; or
 - (b) pay the employee not less than one and a half times his ordinary hourly wage in respect of each hour worked on such Sunday and grant him within seven days of such Sunday, one work day, i.e. a day other than a Saturday or Sunday, as a holiday, and pay him in respect thereof not less than eight and a half hours' remuneration: Provided that for the purposes of this subclause, a piece-worker shall be paid not less than the equivalent amount to which he would have been entitled had he been employed as a time-worker.
- (4) **Public Holidays:**
- (a) Subject to the provisions in (b) and (c) below, an employee other than a casual employee, shall be entitled to leave on full pay in respect of the following public holidays, and where he is required or permitted to work on such holiday he shall be paid in addition to his normal wage in respect of such holiday wages at straight time in respect of the hours so worked:

New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill.
 - (b) If the public holiday falls during the period of annual leave referred to in clause 15, his employer shall pay to him in respect of that public holiday an amount not less than one fifth of his ordinary weekly wage.
 - (c) Notwithstanding the provisions of this subclause, an employee who absents himself from work on any ordinary working day immediately preceding and/or immediately following any public holiday shall not be paid for such public holiday unless such absence is on account of medically certificated sickness.
- (5) Remuneration payable in terms of any of the provisions of this clause shall be paid to the employee concerned not later than the pay-day next succeeding the period in respect of which such remuneration becomes payable.
- (6) **Easter weekend:** No work shall be performed after 13:00 on the day immediately preceding Good Friday and the employees shall be granted the afternoon off as a paid half-holiday.

The employee shall receive for such afternoon full pay in respect of the hours normally worked on Thursday afternoons. Where work is performed on such paid half-holiday, the employee shall, in addition to payment for such half-holiday, receive payment for time worked after 13h00 at overtime rates.

No employer shall require or permit his employees to work in time at ordinary rates of pay or at overtime rates in substitution for the morning work period of the day immediately preceding Good Friday.

This subclause shall not apply to a casual employee.

- (7) The provisions of subclause (3) shall *mutatis mutandis* apply to a normal shift worker who works on his day of rest.
- (8) Overtime shall apply to all employees in an establishment, except travellers' drivers.

12: SHORT TIME

- (1) An employer shall, prior to the day on and from which he intends to work short-time, notify all employees concerned by posting up a notice, or notices, in a prominent position well known and easily accessible to employees in any section or department of the establishment concerned.
- (2) Any employee who has not been given notice in terms of subclause (1) shall, on attending at the establishment, be entitled to be employed for a full working day, or be paid full wages in lieu thereof.
- (3) An employee, who on any day attends at the establishment on the instructions of the employer or his representative shall be entitled to be employed for at least four hours on such day or to receive four hours' pay at his ordinary rate of pay in terms of clause 4(1) read with clause 4(10).
- (4) Consultation with the Trade Union shall take place prior to the introduction of short-time.

13: PROVISION OF TEA AND OTHER BEVERAGES

- (1) Where tea (or other beverages) is provided by the employer, a deduction of not more than one cent per cup may be made from the wages of the employees: Provided that the majority of employees in any establishment has agreed to accept tea (or other beverages).

Reference to "tea" in this subclause shall include the provision of milk and sugar for mixing with such tea (or other beverages).

- (2) Where tea (or other beverages) is not provided, the employer shall, at his own expense, provide and have immediately available to his employees at the commencement of each rest interval, and also at lunch time, a sufficient supply of boiling water and the necessary utensils for the making of tea.

14: CLOSED SHOP

- (1) No employer who is a member of an employers' organisation (which is a party to the Council), shall continue to employ an employee –
 - (a) who, while being eligible for membership of the union, is not a member of the union as at the date of coming into operation of this part of the Agreement; or
 - (b) who does not become a member of the trade union within a period of 90 days from such date.

F -44

- (c) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the union or employers' organisation or who have been refused membership of or expelled from the union or employers' organisation.
- (2) Every employer shall forward all deductions made from the remuneration of employees in respect of union membership fees to the Secretary of the Regional Chamber within fourteen days of month-end in which the deductions fall due. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers by not later than the end of the month in which the fees were received.
- (3) For this part of the Agreement no union membership subscriptions may be -
 - (a) paid to a political party as an affiliation fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.
- (4) Provided that the provisions of this clause will not be applicable to:
 - (a) clerks; or
 - (b) any employee to whom, in the opinion of the Regional Chamber, membership of the trade union has been refused without good and sufficient cause and the applicant has applied to the Council or Regional Chamber within 30 days of such refusal for exemption from the operation of this sub-clause; or
 - (c) an immigrant during the first five years after the date of his/her entry into the Republic of South Africa, provided that if any immigrant has at any time after the first 90 days of commencement of his/her employment in the Industry refused any invitation from the trade union to become a member of it, the provisions of this clause shall immediately come into operation; or
 - (d) a casual employee.
- (5) Provided further that the provisions of section 26(3)(c) of the Act shall be observed by the parties to the Council and to whom this clause is applicable.

15: ANNUAL LEAVE AND PAID PUBLIC HOLIDAYS

- (1) **Annual leave:** Subject to the provisions of subclause (7), every employee shall between 15 December of each year and 14 January of the following year be granted at least three consecutive weeks' and one working day's annual leave and shall, in respect of such leave, be paid as follows:
 - (a) in the case of an employee who on the latest day on which he can commence leave has completed at least one year's continuous employment with his employer:
 - (i) 15 ordinary working days at full wage;
 - (ii) Christmas Day, Day of Goodwill and New Year's Day as paid public holidays in accordance with clause 11 (4) of the Agreement;
 - (iii) when Day of Reconciliation falls within the period of annual leave it shall in accordance with clause 11 (4) of the Agreement also be

observed as a paid public holiday thus extending the annual leave period by one day;

no employee referred to in this subclause shall be paid less than three weeks' wages as annual leave pay.

- (b) in the case of an employee who on the date of closing of the establishment for the specified annual leave period has not completed one year's continuous employment with his employer and whose employment has not been terminated:
- (i) for each completed month of employment in that year an amount equal to one day's pay; plus
 - (ii) for any of the following public holidays falling within the period during which the establishment is closed for the annual holiday period: Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's Day, the amount set out in clause 11 (4) in respect of each such holiday:

Provided that upon termination of employment an employee shall receive payment in lieu of leave calculated as follows:

One day's pay in respect of each completed month of employment calculated from 15 December of the previous year or from the date of engagement, whichever is the shorter period: Provided further that an employer shall not set off against such days of paid leave any days of paid leave granted such employee in excess of the number of day's paid leave he was required to pay the employee in terms of this subclause.

(2) **Paid public holidays:**

- (a) In addition to the paid public holidays normally falling within the period of annual leave, i.e. Christmas Day, Day of Goodwill and New Year's Day, each employee shall be entitled to and be granted leave on full pay on Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day and Day of Reconciliation, subject to the provisions of clause 11 (4).
- (b) Where an employee's employment terminates immediately before any of the paid public holidays referred to in subclause (2) (a), he shall be entitled to payment for such public holidays, provided they fall within an extended period calculated as follows:

One working day in respect of each completed month of employment (calculated from the day on which the employee last became entitled to leave or from date of engagement, whichever is the shorter period) shall be added to the date on which the employee's employment terminates, and if any paid public holidays falls within such added period it shall be paid for: Provided that:

- (i) where the employment of an employee is terminated by his employer at any time during December of any year for reasons other than dismissal without notice for any good cause recognised by law as sufficient, as referred to in clause 18(1)(a), such employee shall be paid in accordance with the rate determined in clause 11 (4) in respect of each of the public holidays referred to in subclause (1)(a) which falls after the date of termination of employment;

F -46

- (ii) where an employee gives notice to his employer of his intention to terminate employment at any time during December of any year, such employee shall not be entitled to payment in respect of the paid public holidays mentioned in subclause (1) (a) unless such paid public holidays fall within an extended period calculated in the manner set out herein.
 - (c) Whenever an employee works on New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National women's Day, Heritage Day, Day of Reconciliation, Christmas Day or Day of Goodwill, his employer shall pay him not less than his ordinary hourly wage in respect of the total period worked on such day, or an amount equal to at least the wage payable to the employee in respect of the time (excluding overtime) ordinarily worked by the employee on that day of the week, whichever amount is the greater, in addition to the remuneration to which he would have been entitled had he not so worked.
 - (d) In the event of a paid holiday falling upon a Sunday, it shall be observed the following day.
 - (e) In the event of any of the paid holidays referred to in subclause (1)(a)(ii) and paragraph (a) hereof falling on Saturday, an employer shall pay his employee who does not work on such day five and a half hours wage in addition to the remuneration which is due to him for time worked from the Monday to Friday immediately preceding such Saturday.
 - (f) Whenever an employee works on a paid holiday falling upon a Saturday, payment for any such day shall be in terms of paragraph (e) hereof, plus, in addition, one and a half times his hourly rate of wage for each hour worked on such Saturday.
- (3) **Payment for leave:** The employer shall pay his employee to whom leave is granted in terms of subclause (1), his pay in respect of leave not later than the last working day before the commencement of the said period, and any amount paid to an employee in terms of subclause (1) or (2) shall be calculated at the rate of pay which the employee was receiving immediately prior to the date upon which the leave became due or his employment terminated, as the case may be; and whenever an employee is paid on a basis other than in accordance with the time actually worked by him, his ordinary rate of pay shall, for the purposes of this clause, be calculated as though he were paid by the hour and shall be ascertained at any date by dividing his total wage during the three months immediately preceding that date, or during the total period of his employment by the employer concerned, whichever is the shorter, by the number of hours worked during the period in respect of which such wage was paid.
- (4) For the purposes of this clause, employment shall be deemed to commence from:
- (a) the date on which the employee entered the employer's service; or
 - (b) the date on which an employee who has, in accordance with the previous Agreement, been granted leave of absence on full pay, became entitled to such leave in terms of such Agreement, whichever may be the later.
- (5) Short-time shall not be deducted by an employer when computing the period of employment qualifying for annual leave in terms of subclause (1).
- (6) Where an employee has absented himself from work for any reason, other than that referred to in subclause (9), such period of absence shall not be considered as employment in terms of subclause (1).

- (7) **Annual leave at periods other than the specified leave period:** An employer may make mutual arrangements with his:
- (a) clerks, factory shop assistants, maintenance staff and watchmen or caretakers to take their annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than three consecutive weeks' leave to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates;
- (‘Maintenance staff’ means employees who are engaged in making repairs or adjustments to machinery or equipment, including the installation of such machinery or equipment, and who may effect cleaning, repairs or renovations to buildings, fixtures and fittings.);
- (b) employees engaged in making samples, to take not more than 10 days' annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than two consecutive weeks' leave, or such lesser period of leave as might be due to the employees concerned, to be granted not later than within that period up to and including Good Friday of the Year immediately succeeding the year of employment to which it relates:
- Provided that in the case of employees making samples, an employer shall be permitted to work 10 employees, or a minimum of 5 per cent of his labour force, whichever is the greater.
- (c) employees, by agreement, to allow for two consecutive weeks' leave, inclusive of public holidays, to be taken in the period December to January each year, with the balance to be taken before the end of June of the following year: Provided that the terms of any such agreement reached by an employer with his employees shall be referred to the Regional Chamber for record purposes.
- (8) **Leave and notice not to be concurrent:**
- (a) Notice of termination of a contract of employment given by an employer shall -
- (i) not be given during any period of leave to which the employee is entitled in terms of this part of the Agreement; and
- (ii) not run concurrently with any period of leave to which the employee is entitled in terms of this part of the Agreement.
- (b) Nothing in this section affects the right -
- (i) of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Act, or any other law; and
- (ii) of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.
- (c) Payment instead of notice: Instead of giving an employee notice, an employer may pay the employee the remuneration the employee would have received, calculated in accordance with this part of the Agreement, if the employee had worked during the notice period.
- (9) Any period during which an employee:

F -48

- (a) is on leave in terms of subclause (1); or
- (b) is absent on military service, not exceeding four months, undergone in that year; or
- (c) is absent from work on the instructions or at the request of the employer; or
- (d) is absent from work owing to illness or by reason of the fact that no female shall work in an establishment and no employer shall require or permit any female to work in his establishment during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after birth (if the child is stillborn or dies before the expiration of eight weeks after birth,

shall be deemed to be employment for the purposes of subclauses (1) and (2): Provided that:

- (i) the provisions of paragraph (d) shall not apply in respect of any period of absence owing to illness of more than three consecutive days, if the employee, not being an employee referred to in proviso (ii) fails, after a request for such certificate by the employer, to submit to the employer a certificate by a medical practitioner that he was prevented by illness from doing his work, or in respect of that part of any total period of absence during any 12 months of employment which is in excess of 30 days;
 - (ii) an employee whose employer is required in terms of any Act of Parliament to provide for the care and treatment of such employee when sick or injured, shall not be required to submit a certificate by a medical practitioner in respect of any period of absence referred to in proviso (i).
- (10) **Advance notice of annual leave period:** At least one calendar month's notice of the actual date of the end of the year leave period shall be given by the employer by exhibition of an appropriate notice in the factory in a conspicuous place readily accessible to his employees.
- (11) **Extension of annual leave period:** An employer shall not be entitled to extend the period of annual leave referred to in subclause (1) without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.
- (12) This clause shall not apply to a casual employee.

16: ENGAGEMENTS, TERMINATIONS, ABSENCES FROM WORK AND TRANSFERS IN OCCUPATION

- (1) **Service record cards to be produced on engagement:**
- (a) Subject to the provisions of subclause (7), an employer shall, before engaging an applicant for work, require an applicant to produce a service record card issued by the Regional Chamber in the form and manner specified by the Regional Chamber.

In addition to issuing a service record card the Regional Chamber shall issue a certificate of service reflecting the employee's employment history.
 - (b) The employer shall forthwith upon engagement enter in the space provided for "subsequent experience" the name of his factory, the date of engagement,

occupation and wage on engagement and shall retain the card in safe-keeping so that it can in due course be dealt with in terms of subclause (2) upon termination of service of the employee.

- (c) No employer shall engage any employee who is in terms of this part of the Agreement entitled to possess a service record card unless such employee has produced to the employer such service record card issued by the Regional Chamber.
 - (d) No employer shall engage any employee who is in terms of this part of the Agreement entitled to possess a Health Care Fund card unless such employee has produced to the employer such membership card issued by the Clothing Industry Health Care Fund in proof of membership of that Fund by such employee.
 - (e) The employer shall forthwith upon engagement of such employee enter in the space provided on such card the name of the factory and the date of engagement, and shall immediately thereafter hand the card back to the employee.
 - (f) Upon termination of such employee's services the employee shall on the day such termination takes place produce to the employer the said membership card issued by the Health Care Fund and the employer shall in the space provided enter the date of termination and shall initial such date in the space provided.
 - (g) If the service record card shows that the employee is re-entering the Industry after confinement, the employer shall not permit the employee to commence work until a post-natal examination certificate has been produced in terms of subclause (7).
- (2) **Service record card to be returned to employee on termination of service or retained if on maternity leave:** Upon termination of service of an employee, the employer shall complete the remaining details on the employee's service record card, i.e. date of leaving, wage at date of leaving and length of employment. The completed card shall thereafter be initialled and handed to the employee on termination of service.

If the employee is ceasing employment due to confinement, this shall be endorsed on the card by the words "Due to Confinement" being written on the line on which the "Date of Leaving" is recorded.

If the employee is proceeding on maternity leave, the words "Maternity leave" and the date from which the employee proceeds on maternity leave must be written on the card on the line on which the "Date of Leaving" is recorded and the card retained by the employer.

- (3) **Procedure when employee does not produce a service record card:** The employer shall forthwith upon engagement cause an application in the form and manner specified by the Regional Chamber, including a Provident Fund nomination of beneficiary form, to be completed by the prospective employee and shall attach same to the weekly return of engagements referred to in subclause (4).
- (4) **Weekly returns of engagements, terminations, absences from work and transfers in occupation:** Not later than on Friday of each week the employer shall complete and transmit to the Regional Chamber a record, in the form and manner specified by the Regional Chamber, of all engagements, terminations, the first or last dates of absences from work for four or more consecutive pay weeks and transfers in occupation of employees in respect of that week: Provided that where in any week no changes have been effected, a "Nil" return shall be submitted.

F -50

- (5) **Dependants to be registered:** Every employer shall, when the Minister declares this part of the Agreement binding and thereafter at the engagement of each employee, determine if an employee has dependants and ensure that such dependants are registered with the Health Care Fund, and every employer shall, if an employee's dependants have not previously been registered with the Health Care Fund, inform the Regional Chamber of the Dependants of each of his employees within five days of the end of each calendar month in the form and manner specified by the Regional Chamber. In the event of no dependants having to be registered in respect of the calendar month, a 'Nil' return shall be submitted.

An employee who can prove to the satisfaction of his employer that his dependants are covered by a registered medical aid scheme need not register his dependants with the Health Care Fund. Proof of such medical aid scheme membership must be available for inspection purposes.

An employer shall forward the service record card of each employee with dependants to the Regional Chamber to enable the Regional Chamber to record the fact that an employee has dependants on such card unless the employee's card already reflects such information.

- (6) **Notice of termination of service to be given in writing by employer or employee:**
- (a) An employer shall, when giving notice of his intention to terminate an employee's employment, give his employee written notice in the form and manner specified by the Regional Chamber.
 - (b) An employee shall, when giving notice of his intention to terminate his employment, give his employer written notice in the form and manner specified by the Regional Chamber.
- (7) **Procedure where employee proceeds on maternity leave or leaves employment due to confinement and on re-employment thereafter:**
- (a) Where an employee resigns when proceeding on maternity leave, this fact must be recorded on her service record card as provided for in subclause (2) above.
 - (b) Where an employee leaves work due to confinement, the employer must still record the date of ceasing work due to confinement.
 - (c) Not later than on the date of such termination or ceasing of work or commencement of maternity leave as the case may be, the employer shall provide the employee with a blank "post-natal examination certificate", and neither the same employer nor any new employer shall permit the employee to recommence employment or to start fresh employment unless the employee produces a properly completed "post-natal examination certificate" of her fitness for employment.
 - (d) Where such certificate shows that the employee requires further treatment, the Secretary of the Health Care Fund must be notified thereof and the certificate forwarded to him by registered post.
 - (e) Supplies of the blank "post-natal examination certificates" may be obtained from the Secretary of the Fund.
- (8) **Procedure where an employee withdraws notice:** An employee may only withdraw notice of his intention to terminate his contract of employment within two (2) working days of having tendered such notice and the employer shall require the

employee concerned to acknowledge and confirm such withdrawal in the form and manner specified by the Regional Chamber.

- (9) **Duplicate service record cards:** Duplicate service record cards may be issued by the Regional Chamber upon the payment of an amount determined by the Regional Chamber from time to time.
- (10) This clause shall not apply to a casual employee.

17: RECORD CARDS AND AGREEMENT

- (1) **Record cards:** Every employer shall maintain a record card in respect of each of his employees other than casual employees showing the following particulars:
- (a) factory number of employee;
 - (b) name;
 - (c) sex;
 - (d) address;
 - (e) age;
 - (f) occupation;
 - (g) starting date;
 - (h) previous experience;
 - (i) number of service record card;
 - (j) commencing wage;
 - (k) increments and dates;
 - (l) transfers in occupation and dates.
- (2) **Exhibition of Agreement:** Every employer shall affix and keep affixed in his establishment in a conspicuous place readily accessible to his employees, in the form prescribed in the regulations under the Act, a legible copy of this part of the Agreement in at least two official languages: Provided further that every employer on whom the collective agreement, arbitration award, or determination is binding must -
- (a) keep a copy of that collective agreement, arbitration award or determination available in the workplace at all times;
 - (b) make that copy available for inspection by any employee; and
 - (c) give a copy of that collective agreement, arbitration award or determination -
 - (i) to an employee who has paid the prescribed fee; and
 - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.
- (3) **Administration of Agreement:** The Regional Chamber shall be the body responsible for the administration of this part of the Agreement, and may issue expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.

18: TERMINATION OF EMPLOYMENT

- (1) **Period of notice:** Subject to:
- (a) the right of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law as sufficient;

F -52

- (b) the provisions of any written agreement between the employer and his employees which provides for a period of notice of equal duration on both sides and for longer than one week or one month, as the case may be;
- (c) the provisions of subclause (8);

an employer and his employee shall, in the case of a weekly paid employee, give not less than one week's notice and in the case of a monthly-paid employee, not less than one month's notice, of his intention to terminate the contract of employment.

- (2) **Payment or forfeiture in lieu of notice:** In the event of an employer or an employee failing to give notice as provided for in subclause (1), an employer shall pay the employee or the employee shall pay and/or forfeit to the employer:
 - (a) in the case of a weekly-paid employee, one week's wages;
 - (b) in the case of a monthly-paid employee, one month's wages;

calculated at the rate of pay which such employee was receiving immediately before the date of such termination.

In the above regard absence from work without prior permission for a period of six consecutive days shall constitute a termination of the contract of employment unless within six days the employee has furnished to this employer a medical certificate certifying his inability to perform his usual work, in which case the employer shall, within three days of receipt of such certificate, advise the employee that it will keep his employment open until the employee is able to work or tender to such employee written notice of termination of service. Any employer who fails to keep the employee's employment open or to tender notice within such three days shall be required to pay the employee in lieu of such notice.

Provided that where an employee has submitted a medical certificate to his employer and subsequently returns to resume service and his employer elects to summarily terminate his employment, his date of termination shall be the date of summary termination and not the date on which he last worked.

For the purpose of this sub-clause, where an employee attends work on a Friday, the period of absence from work shall commence from the next succeeding Monday, i.e. the intervening Saturday and Sunday shall be ignored in calculating the six consecutive calendar days' period of absence.

Nothing contained in this subclause shall in any way limit the rights and protection afforded to employees in terms of Chapter VIII of the Act.

- (3) Notwithstanding anything to the contrary in this part of the Agreement, should any money owing by an employer to an employee by way of wages be insufficient to meet the full amount of forfeiture referred to in subclause (2), the employer shall be entitled to retain such amount from other benefits (if any) which were in the process of accrual to such employee at the time of termination of his contract of employment.

For the purposes of this subclause, any payment which may be due to an employee in terms of clause 15 (1), (2) and (3) of this part of the Agreement shall also be regarded as a benefit in the process of accrual.

- (4) When an agreement is entered into in terms of subclause (1), the payment or forfeiture in lieu of notice shall be proportionate to the period of notice agreed upon.
- (5) **Date of coming into operation of notice to terminate employment:**

- (a) **Weekly-paid employees:** Notice shall be given on any working day and shall operate from the following day.
 - (b) **Monthly-paid employees:** Notice shall be given at any time prior to the usual closing time of the establishment on the last working day of the calendar month and shall operate from the first day of the succeeding month.
- (6) For the purposes of this clause, a week's notice shall mean a working week of not more than the number of hours ordinarily worked by the employee, or a full week's pay in lieu thereof, and the same proviso shall apply to the period of notice specified or mutually agreed upon in terms of subclause (4).
- (7) Where short-time is worked in an establishment, notice to terminate employment shall be in terms of (a) and (b) hereof:
- (a) an employee may terminate his contract of employment by giving his employer notice equivalent to the number of days worked in the week preceding the notice week; and
 - (b) an employer working short-time shall give like notice to an employee to terminate his contract of employment.
- (8) **Trial Periods:**
- (a) **Weekly employees:** The provisions of this clause shall not apply during the first four weeks of employment. Such four weeks shall be deemed to be period of trial during which the employment may be terminated by the employer or the employee at 24 hours notice.
 - (b) **Monthly employees:** The provisions of this clause shall not apply during the first six weeks of employment. Such six weeks shall be deemed to be a period of trial during which the employment may be terminated by the employer or the employee at 24 hours' notice.
- (9) This clause shall not apply to a casual employee.

19: EXEMPTIONS

A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
 - (a) The period for which the exemption is sought;
 - (b) the number of employees affected and how many of such employees are members of a registered trade union;

F -54

- (c) the clauses and subclauses of this part of the Agreement from which the exemption is sought;
 - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
 - (e) the demonstrable commercial need of the applicant for the exemption sought.
- (4)
- (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
 - (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application shall be deemed to have been refused.
 - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
 - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.
 - (e) Subject to the time period for considering the application referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
 - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
 - (g) If the application has been granted or partially granted, the Exemptions Committee 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 exemption(s) will be valid'
 - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
 - (iv) the full name of the exempt employer or employee(s).
 - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.

- (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such a fee shall be consistent with-
- (i) the cost incurred for the hearing of the appeal;
- (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall, in addition, have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
- (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
- (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
- (a) There is a demonstrable commercial need for the exemption.
- (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
- (c) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted, result in a conflict with the primary objectives of the Act.
- (d) The exemption will not undermine collective bargaining and labour peace in the industry.
- (e) There has been compliance with subclause (3) above.

F -56

- (f) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.
 - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
 - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability.
 - (d) The terms of the exemption sought, including the period thereof.
 - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
 - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
 - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
 - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
 - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
 - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
 - (k) What hardship may eventuate to employees in the event of the exemption being granted.
 - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
 - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.

- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement, except in the case of Embroidery Employers.

20: SEATING ACCOMMODATION

Seats with suitable back rests, approved of by the Regional Chamber, shall be provided for all female employees.

21: TOOLS AND MATERIALS

The employer shall, free of charge, supply to the employees all tools (other than scissors), materials and requisites for the manufacture of clothing.

22: EXPENSES OF THE COUNCIL AND REGIONAL CHAMBER

- (1) The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.
- (2) (a) For the purpose of meeting the expenses of the Council and Regional Chamber, every employer shall deduct from the earnings of each of his employees for whom minimum wages are prescribed in clause 4 of this part of the Agreement, an amount equal to 0.22% of each employee's wages per week, calculated at the qualified machinist's rate of pay, payable by means of a deduction from the employee's wages maximum of R1,97 per week.
- (b) To the amount so deducted, the employer shall add an amount equal to 0.32% of each employee's wages per week, calculated at the qualified machinist's rate of pay, payable by the employer maximum of R3,17 per week and forward, month by month, and not later than the 14th day of each month, the total sum to the Regional Secretary of the Regional Chamber.
- (3) (a) Every employer shall make a return to the Regional Chamber of the number of employees employed by him for each week of each calendar month in the form and manner specified and supplied by the Regional Chamber.
- (b) Should any amount due in terms of this clause not be received by the Regional Chamber 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 Regional Chamber 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 Regional Chamber. Provided that the Regional Chamber 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 or Regional Chamber 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 pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.
- (4) This clause shall not apply to a casual employee.

23: TRADE UNION REPRESENTATIVES ON THE REGIONAL CHAMBER

Every employer shall give to any of his employees who are representatives on the Council every reasonable facility to attend to their duties in connection with the work of the Council or Regional Chamber: Provided that in establishments employing 5 or fewer employees, the trade union shall give the employer 5 days' written notice of its request for time off for its representative in terms of this clause.

24 : POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE OF AND IN TERMS OF THIS PART OF THE AGREEMENT

- (1) One or more persons shall be appointed by the Council or Regional Chamber as agents to assist in enforcing the terms of the Council's or Regional Chamber'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 or Regional Chamber.
- (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 part of the Agreement in terms of clause 36 or the Disputes Procedure in terms of clause 37 of this part of the 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 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) shall be signed by a designated agent and shall -
 - (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 General Secretary of the Council or Regional Secretary of the Regional Chamber.
- (7) The owner or occupier of any premises that an agent and/or any other appointed person 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 agent and/or appointed person 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 agent and/or appointed person must pay the witness fee specified from time to time in terms of Section 208 of the Act to each person who appears before him in response to a subpoena issued, where such fee has been specified by the Minister of Labour or, in the absence of a fee being specified by the Minister, as may be determined by the Council from time to time.

F -60

- (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 agent and/or appointed person;
 - (c) by refusing to take the oath or to make an affirmation as a witness when an agent and/or appointed person 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 an agent and/or appointed person;
 - (f) if the person wilfully hinders an agent and/or appointed person in performing any function conferred by or in terms of this Act;
 - (g) if the person insults, disparages or belittles an agent and/or appointed person, 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 agent and/or appointed person 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 or Regional Chamber refer any contempt to the Labour Court for an appropriate order.

25: OUTWORK AND DISCLOSURE OF EMPLOYERS' PATTERNS ETC.

- (1) Every employer giving out work on contract shall at all times keep a record showing:
- (a) the name and address of the person to whom the work has been given out;
 - (b) a description of the type and quantity of work given out; and
 - (c) the dates upon which the work was given out and the dates upon which it was received back.

For the purposes of this subclause, 'giving out work' shall include the issue of materials for the purpose of having such materials made up into garments or parts of garments.

- (2) Every employer shall retain such record for a period of three years subsequent to the occurrence of that event and shall, on demand by a designated agent of the Council or Regional Chamber made at any time during the said period of three years, produce the said record for inspection.
- (3) Every employer shall within 14 days of the end of each quarter (i.e. for the periods ending 31 March, 30 June, 30 September and 31 December) forward a return of outwork to the Regional Chamber in the form and manner specified by the Regional Chamber.

- (4) No employee in the employ of an employer shall disclose to any other employer or person any cutting patterns or templates used by his employer.
- (5) No employer shall induce any employee of another employer to disclose any cutting patterns or templates used by such employee's employer.

26: CLOTHING INDUSTRY HEALTH CARE FUND

- (1) The Fund established under Government Notice No 43 of 9 January 1948, and known as the "Clothing Industry Health Care Fund" (formerly the "Cape Clothing Industry Sick Fund" and "Cape Clothing Industry Sick Benefit Fund") and hereinafter referred to as the "Fund" is hereby continued.
- (2) The administration of the Fund shall be vested in a Management Committee which shall be appointed at a duly constituted meeting of the Regional Chamber, in terms of the Council's Constitution, and shall consist of six employers' representatives and six employee representatives, with the Chairman and the Vice-Chairman of the Regional Chamber, as *ex officio* members. A paid secretary, who shall also be the Secretary of the Fund, shall be appointed by the Committee.
- (3) One copy of this Collective Agreement, Clause 26 of which shall represent the Rules of the said Fund, and any amendments thereof, shall be kept by the General Secretary of the Council and Regional Secretary of the Regional Chamber.
- (4) (a) The purpose of the Fund is to provide medical and related benefits for employees and their dependants and for such purpose every employer shall each week deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement and who has worked during any week irrespective of the time so worked (hereinafter referred to as a 'contributor'), the following amount:
- Group 1 In the case of a contributor earning R3,00 per week or less in excess of the wage rate specified for a Qualified Grade B employee in clause 4 (1) (a) of this Part of the Agreement:
- without dependants: R24,78
with dependants: R29,48
- Group 2 In the case of a contributor earning R3,01 per week and more in excess of the wage rate specified for a Qualified Grade B employee in clause 4 (1) (a) of this Part of the Agreement:
- without dependants: R26,78
with dependants: R33,48
- (b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute per week the amounts set out below:
- Group 1 In the case of a contributor earning R3,00 per week or less in excess of the wage rate specified to a Qualified Grade B employee in clause 4 (1) (a) of this Part of the Agreement: R8,19;
- Group 2 In the case of a contributor earning R3,01 per week and more in excess of the wage rate specified to a Qualified Grade B employee in clause 4 (1) (a) of this Part of the Agreement: R9,77.
- (c) (i) The total sum representing the employer's contributions and the contributor's contributions shall be forwarded monthly by the employer to

F -62

the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.

- (ii) Should any amount due in terms of this clause not be received by the Regional Chamber 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 Regional Chamber from time to time, calculated from the first day of the month in which the payment is due until the day upon which payment is actually received by the Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.
 - (iii) In the event of the Council or Regional Chamber 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 pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.
- (d) Upon receipt of the first eight payments to the Fund in respect of each contributor, the Secretary of the Fund shall allocate a Fund number to each contributor and prepare a membership card reflecting:
- (i) the full name of the employer;
 - (ii) the full name of the contributor;
 - (iii) the Fund number of the contributor.

The Secretary of the Fund shall thereafter either notify the contributor to call and the card shall be handed to the contributor after the contributor has signed the card in the presence of an official of the fund, or transmit the card to the employer to hand it to the contributor, in which event it shall be the duty of such employer to ensure that the contributor signs the card immediately on receipt thereof and furnishes a receipt thereof which the employer shall, thereafter, transmit to the secretary of the Fund within seven days.

- (e) All the moneys received by the Fund shall be deposited in a banking account for the Fund which shall be opened by the Regional Chamber, in the name of the "Clothing Industry Health Care Fund": Provided that the Management Committee may from time to time authorise investments of funds in terms of the Act.
- (f) The Management Committee shall appoint an auditor for the Fund, who shall be a registered accountant, and determine his remuneration, which shall be paid out of the Fund. The accounts of the Fund shall be audited annually for the 12 months ending 31 December each year from the year commencing 1 January 2003. A copy of the audited financial statements, approved by the Management Committee, shall be signed by the Chairperson of the Management Committee and the Regional Secretary of the Regional Chamber, and a copy provided to the General Secretary of the Council who shall transmit a copy to the Registrar: Labour.
- (g) Disbursements from the fund shall cease whenever the amount to the credit of the Fund falls below R50 000.

- (h) The employer shall each week notify the Fund of all contributors who have been absent without pay for four or more consecutive pay-weeks in the manner specified in clause 16(4) of this part of the Agreement.
- (5) (a) The contributor shall be liable for any benefits paid to him or obtained by him as a result of his misrepresentation of the facts or as a result of an error in the calculation of such benefits, and the Management Committee may set off the incorrect amount paid to the contributor against any further benefits due to him or recover the amount from the contributor.
- (b) If a contributor leaves his employment in the Industry for the purpose of taking employment outside the Industry, he shall forfeit all claims to the Fund.
- (c) Maternity benefits:**
- (i) Subject to the provisions of this part of the Agreement a female contributor who-
- (aa) has continuously contributed to the Health Care Fund for no less than one year; and
- (ab) has continuously been employed in the Industry for no less than one year;
- as at the date of ceasing employment because of her pregnancy shall be entitled to the maternity benefits set out in (iii) below. Female contributors entitled to maternity benefits shall include the following:
- (A) A female contributor who becomes unemployed through no fault of her own because of retrenchment or closure or liquidation of her employer's establishment, regardless of the stage of her pregnancy at the time of becoming unemployed; and
- (B) a female contributor who resigns, subject to her pregnancy, at date of resignation, being 22 weeks or more.
- (ii) For the purposes of this subclause, non-contributing periods owing to illness and/or short time shall be deemed to be periods of contribution.
- (iii) Any employee who is entitled to maternity benefits shall receive a lump sum payment equal to 25 per cent of such employee's weekly wage earned at the time of ceasing employment because of her pregnancy, multiplied by 13: Provided that no such payment shall be made to the employee-
- (aa) earlier than four weeks prior to the expected date of her confinement; which expected date shall be determined by a recent medical certificate signed by a medical practitioner indicating the number of weeks' pregnancy and the expected date of confinement; or
- (ab) in the event of a prematurely born child which is alive at birth, unless she produces a birth certificate; or
- (ac) in respect of a miscarriage, abortion or still-born child that occurs during the first 35 weeks of pregnancy; or
- (ad) if the employee dies prior to claiming the benefit due to her in terms of this subclause, until such time as the Master of the High Court has decided to whom such benefit should be paid.

F -64

- (6) All contributors from whose wages eight or more consecutive weekly deductions have been made in terms of subclause (4) (a) shall be entitled to the following benefits:
- (a) the services of a medical officer appointed by the Fund;
 - (b) consultations with specialists appointed by the Fund;
 - (c) free medicines prescribed and dispensed by the medical officers or specialists appointed by the Fund;
 - (d) the benefits provided for in subclause (7), (8) and (9).
 - (e) medical and related benefits as determined by the Management Committee, for their registered dependants.

The benefits provided for in this subclause shall cease eight weeks after the date of termination as a contributor in the Industry.

The cost of medical attention or pharmaceutical supplies rendered or dispensed by medical officers appointed by the Management Committee in respect of a contributor shall be paid by the Fund which shall also pay the cost of operating the Assisted Optical Scheme referred to in subclause (8) and the dental surgeries referred to in subclause (9).

Such costs shall be payable in respect of a period not exceeding three weeks in any cycle of one calendar year and shall be subject to such further conditions as may from time to time be decided by the Management Committee.

Where a contributor withdraws the money standing to his credit from the Cape Clothing Industry Provident Fund, and provided such payment is made due to the employee leaving the Industry as a result of serious ill health or incapacity prior to reaching the age for retirement from the Cape Clothing Industry Provident Fund, such employee shall be entitled to free medical treatment from any one of the Fund's medical officers and free medicines supplied by such medical officer during the period of 26 weeks calculated from the date on which such employee leaves the Industry.

Pregnancy shall not be regarded as an 'illness' for the purpose of benefits and only one visit to the doctor shall be allowed at the expense of the Fund.

- (7) **Gynaecological clinics:** Reasonable facilities shall be afforded to employees to attend the Health Care Fund clinic and upon production of a certificate from the Health Care Fund sister that an appointment has been made, the employer shall pay for time lost by the employee in attending the clinic up to a maximum of two hours in any week.
- (8) **Optical clinic:** The Fund shall provide and equip an optical clinic where employees may be tested by means of an Ortho-rater or similar machine. Where such test shows that further attention is needed, the Fund shall, in consultation with the employer, arrange an appointment with an ophthalmologist and the employee shall be notified of such appointment. The employer shall pay for the time lost by the employee in attending the clinic and for the purpose of keeping the appointment with the ophthalmologist, up to a maximum of two hours in any week. Before an appointment is made with such specialist on behalf of an employee, the employee shall lodge with the Health Care Fund such amount as may from time to time be determined by the Management Committee as being the employee's contribution towards the cost of spectacles. Such contribution shall be in respect of standard type frames, as approved by the Management Committee. Where a more expensive frame is desired, the additional costs involved shall be borne by the employee.

- (9) **Dental surgeries:**
- (a) The Fund shall provide and equip one or more dental surgeries for the benefit of contributors.
 - (b) A contributor shall pay not more than the following percentages of the charge submitted by a dental technician for dentures, partial dentures or repairs to dentures which have been prescribed by the Fund's dental surgeon:
 - (i) contributors who have completed 10 years membership of the Fund: 60 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
 - (ii) contributors who have completed five years' membership of the Fund: 80 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
 - (iii) contributors who have completed less than five years' membership of the Fund: 100 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures.
 - (c) The Management Committee may determine the contributor's payment towards the cost of any other dental treatment: Provided that no contributor shall be required to pay towards the cost of the treatment of dental caries or X-rays taken, as prescribed by the Fund's dental surgeon.
 - (d) The Fund shall, in consultation with a contributor, arrange an appointment with the dental surgeon for treatment and the employer shall be notified of the appointment. The employer shall pay the contributor for time lost by the contributor in attending the dental surgery for the purpose of keeping such appointment, up to a maximum of two hours in any week.
- (10) In the event of the expiration of this part of the Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the Management Committee until it be either liquidated or transferred by the Council or Regional Chamber to any other fund constituted for the same purpose as that for which the original Fund was created: Provided that the Fund shall be liquidated by a person appointed by the Council or Regional Chamber unless an Agreement providing for the continuation of the Fund or for the transfer of its moneys as aforesaid is entered into within 12 months of date of expiration of this part of the Agreement.
- (11) In the event of dissolution of the Council or Regional Chamber, or in the event of its ceasing to function during any period in which this part of the Agreement is binding in terms of the Act, the Management Committee shall continue to administer the Fund and the members of the Management Committee existing at the date on which the Council or Regional Chamber, as the case may be, ceases to function or is dissolved shall be deemed to be members thereof for such purpose: Provided, however that any vacancy occurring on the Management Committee may be filled by the Registrar from employers or employees in the Industry, as the case may be, so as to ensure an equality of employer and employee representatives and of alternates in the membership of the Management Committee. In the event of such Management Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar, he may appoint a trustee or trustees to carry out the duties of the Management Committee and who shall possess all the powers of the Management Committee for such purpose.

In the event of there being no Council or Regional Chamber in existence, the Fund shall be liquidated upon the expiration of this part of the Agreement in the manner set

F -66

forth in subclause (12), and if upon the expiration of the Agreement the affairs of the Council or Regional Chamber, as the case may be, have already been wound up and its assets distributed, the balance of the Fund shall be distributed as provided for in Section 59(5) of the Act and the Council's Constitution as if it formed part of the general funds of the Council or Regional Chamber.

- (12) Upon liquidation of the Fund in terms of subclause (10), 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 general funds of the Council or Regional Chamber.

- (13) (a) An employer shall grant an employee who is absent from work through incapacity:

(i) in the case of an employee who regularly works not more than five days a week, not less than 10 working days; or

(ii) in the case of any other employee, not less than 12 working days;

sick leave in the aggregate on full pay during each period of 12 consecutive months commencing 1 July 1997 and on each July 1st thereafter, for which the employee is employed by him (hereinafter referred to as the 'sick leave cycle'):

Provided that during the first 12 consecutive months of employment an employee shall not be entitled to sick leave on full pay at a rate of more than, in the case of an employee who regularly works not more than five days in a week, one working day in respect of each completed period of five weeks of employment and, in the case of any other employee, one working day in respect of each completed month of employment. The sick leave cycle of such employees shall commence on the next July 1st so as to ensure a common Industry Anniversary date of 1 July for sick leave.

- (b) The amount to be paid in terms of paragraph (a) to an employee in respect of a day's sick leave on full pay shall not be less than the wage payable to him in respect of the time (excluding overtime) ordinarily worked by him on that day of the week.

- (c) An employer shall not be bound in terms of paragraph (a) to pay to an employee an amount in respect of any absence from work for a period covering more than two consecutive days, unless the employee produces a certificate signed by a medical practitioner stating the nature and duration of the employee's incapacity:

Provided that if an employee has during any period of up to eight weeks received payment in terms of paragraph (a) on two or more occasions without having produced such a certificate to his employer, his employer shall during the period of eight weeks immediately succeeding the last such occasion not be bound to pay the said amount to the employee in respect of any absence from work, unless he produces such a certificate.

- (d) Where an employer is by or under a provision of any law required to pay fees for hospital or medical treatment in respect of an employee and he pays such fees in respect of any incapacity of an employee, the employer may set off the amount so paid against any payment which he has to pay in terms of paragraph (a) to the employee in respect of sick leave because of such incapacity.

- (e) The provisions of paragraph (a) shall not apply in respect of any period of incapacity of an employee in respect of which the employer is by or under a

provision of any law required to pay the employee an amount of not less than the equivalent of his wage.

- (f) For the purpose of this subclause:
- (i) any period during which an employee:
 - (aa) is on leave by virtue of clause 15;
 - (ab) is on sick leave by virtue of paragraph (a);
 - (ac) is absent from work on the instruction or at the request of his employer; or
 - (ad) is undergoing military training,

amounting in the aggregate in any sick leave cycle to not more than 30 weeks in respect of the periods referred to in sub-items (aa), (ab) and (ac), plus up to 12 months of any period of military training referred to in sub-item (ad) undergone in that sick leave cycle, shall be deemed to be employment with his employer;
 - (ii) any continuous employment which an employee has had with the same employer at the date from which the Minister declares this part of the Agreement binding shall be taken into account, and any sick leave on full pay granted by the employer to that employee during that period of continuous employment shall be deemed to have been granted under this subclause: Provided that the provisions of this paragraph shall apply only to employees exempted from the provisions of subclauses (1) to (12).
- (g) For the purpose of this subclause-
- (i) the provision in paragraph (a) shall apply irrespective of whether or not an employee has exceeded the 30 days (or 36 days - as the case may be) under his incomplete 36-month cycle as at 30 June 1997 in terms of the previous agreement;
 - (ii) any employee who had not been paid by his employer for sick leave taken since 1 July 1997 in terms of the previous agreement, shall be entitled to payment for those days up to a maximum of his new 10-day (or 12 days - as the case may be) entitlement in terms of this part of the Agreement;
 - (iii) sick leave not taken in one year cannot be carried forward to the next year and the following year's paid leave of 10 days (or 12 days - as the case may be) may not be taken in advance. This, however, does not detract from an employee's right to unpaid sick leave when the 10 days (or 12 days - as the case may be) per year limit has been exceeded;
 - (iv) all employees who have been certified as having an illness of 10 days or more (or 12 days - as the case may be) in any period of 36 consecutive months employment with an employer, commencing 1 July 1997 and ending on 30 June 2000, and on 1 July of every 36-month period thereafter, may apply to the Health Care Fund Management Committee referred to in subclause (2) for paid sick leave up to a maximum of 30 days (or 36 days, where more than five days per week are regularly worked), or any balance exceeding 10 days (or 12 days, as the case may be) and still remaining in such period of 36 months: provided that on receipt of such application, the Health Care Fund

F -68

Management Committee may exercise its right to decide on the merits of the application and rule whether or not the employer should pay for such extended sick leave. The provision is referred to as the "Serious Illness or Injury Provision";

- (v) employees and employers shall have the right to dispute a decision of payment or non-payment and they may use the dispute resolution procedures of the Bargaining Council to resolve same. These dispute procedures may be applied where an employee or employer objects to the ruling of the Health Care Fund Management Committee or where the Management Committee is unable to make a ruling for whatever reason.
- (vi) all parents employed in the Industry will be entitled to use all or part of their annual paid sick leave entitlement (10 or 12 days, as the case may be) in terms of this part of the Agreement or the provisions of the Basic Conditions of Employment Act 1997 (Act No 75 of 1997), whichever may be applicable under the circumstances, for the purposes of caring for ill dependent children on condition that -
 - (aa) an ill dependent child must have been diagnosed and certified at a Health Care Facility of the Fund as seriously ill or injured and that the parent's presence is necessary during the period of the child's recovery or part thereof; and
 - (ab) prior appointment for consultation at a Health Care Facility of the Fund has been made or prior notification to the principal member's employer and/or where the principle member has reported to a Health Care Facility of the Fund:

Provided that the mere presence of the principal member with an ill child at a Health Care Facility of the Fund shall not automatically entitle such member to a certificate for sick leave payment. All certificates will be issued at the sole discretion of the Medical Officer or other professional staff of the Fund. In such cases, the Medical Officer or other professional staff of the Fund shall endorse the certificate with the appropriate wording determined by the Management Committee of the Fund.

Provided further that a principal member parent who presents a certificate for a child which has been issued by a Public Funded Hospital shall be eligible for benefits under this arrangement only in instances where the Fund's own professional staff have confirmed the diagnosis and requirements in terms of this provision.

For purposes hereof, a Public Funded Hospital shall mean any of those larger State Hospitals which usually provide a 24-hour service.

Provided also that employees in the Industry who fall within the jurisdiction of the Regional Chamber and who have been exempted from contributing to the Fund shall be entitled to attend a Health Care Fund facility of the Fund for purposes of obtaining the required certification in respect of an ill dependent child. Such an arrangement however, shall, not entitle the employee or his dependents to any medical attention.

- (14) **Indemnity:** The members of the Management Committee and their alternates shall not be liable for any loss to the Fund arising by any reason of any act in their bona fide administration of the Fund 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 willful 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 or in which he is acquitted.
- (15) **Millinery Industry (Cape):** The provisions of this clause shall *mutatis mutandis* apply to the employers and the employees subject to the Agreement for the Millinery Industry, Cape, published under Government Notice R. 1162 of 8 June 1979, or the corresponding provisions of any agreement superseding that Agreement.
- (16) The Management Committee shall decide from time to time upon the form and manner in which claims shall be lodged and benefits paid in terms of this clause.
- (17) This clause shall not apply to a casual employee.

27: TRADE UNION SUBSCRIPTIONS

- (1) An employer shall deduct trade union subscriptions and levies weekly from the remuneration of trade union members on their written authorisation, other than where an exemption has been granted by the Council or Regional Chamber or by the Independent Exemptions Body: Provided such moneys have been determined in terms of the Union's Constitution. The employer shall forward such amounts so deducted to the Regional Secretary of the Regional Chamber, for transmission to the Union.
- (2) Each month the total amount of such deductions together with a list showing the names and service record card numbers of the employees and the amounts deducted each week for each employee shall be forwarded to the Regional Secretary of the Regional Chamber by no later than the fourteenth day of the month succeeding the month in which they were deducted.
- (3) Every employer must in respect of each trade union member employed by him contribute towards the **Trade Union Bursary Fund** at the rate of 31 cents per week.
- (4) Every employer shall, in respect of each of his employees for whom Bargaining Council contributions are paid in terms of Clause 22 of this part of the Agreement, contribute towards the **Trade Union's "HIV/AIDS Project"** at the rate of 45 cents per week.
- (5) Each month the total sum representing trade union subscriptions of employees, bursary fund and HIV/AIDS project contributions by the employer shall be recorded in the manner specified in clause 22(2) of this part of the Agreement and shall then be forwarded to the Regional Secretary of the Regional Chamber.

28: REGISTRATION OF EMPLOYERS

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of a previous agreement shall within seven days of the date on which this part of the Agreement becomes binding on him furnish to the Regional

Secretary of the Regional Chamber the particulars set out in the form and manner specified by the Regional Chamber.

- (2) In the event of any change in the name under which or the address or addresses at which business is carried on, or among the partners, or if the employer is a company, in the name of its secretary or among its directors or managers or, if the employer is a close corporation, among its members, or in the event of the sequestration of the employer's estate or, if the employer is a company or close corporation, of the winding up of the company or close corporation, or in the event of the transfer or abandonment of the business carried on, or the acquisition or commencement of any other business carried on, or the acquisition or commencement of any other business which is subject to this part of the Agreement, every employer shall furnish to the Regional Secretary of the Regional Chamber within seven days notice of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement by means of a written statement setting forth full particulars of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement, as the case may be.

29: WAGE GUARANTEE

- (1) (a) Every employer who enters the Industry after the date of coming into operation of this part of the Agreement shall, within seven days of the date on which such employer commences operations in the Industry, lodge with the Regional Chamber a guarantee acceptable to the Regional Chamber.
- (b) Every employer who entered the Industry prior to the date of coming into operation of this part of the Agreement and who was required to lodge an acceptable wage guarantee with the Regional Chamber shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
- (c) Where the guarantee lodged by any employer in accordance with the provisions of any previous agreement is no longer valid, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a fresh guarantee as specified in paragraph (a) hereof.
- (d) Where any employer ceases operations in the Industry and subsequently resumes operations in the Industry, he shall be regarded as a new employer and shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
- (e) Notwithstanding the provisions of subclause (1) (a) of this clause, where any employer fails to pay levies/contributions due to the Regional Chamber and its funds for a period of two months or more within the periods specified, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
- (2) (a) Where the guarantee lodged by an employer is deemed to be inadequate by the Regional Chamber, the employer shall on demand by the Regional Chamber increase the amount of such guarantee to an amount deemed adequate by the Regional Chamber.
- (b) An employer shall be permitted to reduce the amount of his guarantee where a reduction in the number of employees engaged by such employer warrants a deduction: Provided that no increase or reduction of the amount of any guarantee shall be required or permitted at intervals of less than six months.
- (3) The Regional Chamber shall be entitled to utilize any guarantee lodged by an employer with the Regional Chamber in terms of subclause (1) to pay any

amount which may be due to the Regional Chamber by such employer in respect of levies and contributions or to pay any wages and/or leave pay which may be due to any one or more employees of such employer, where the Regional Chamber is satisfied that such wages and/or leave pay is due and payable to the employees concerned by the employer involved. Provided that the total claim in respect of any one or more employees shall not exceed the total amount of the guarantee lodged with the Regional Chamber.

30: MATERNITY LEAVE

- (1) Subject to the provisions of this part of the Agreement a female employee who -
- (a) has continuously worked for the same employer for not less than one year; and
 - (b) whose employer has been continuously registered with the Regional Chamber for not less than one year;

as and at the date of commencing her maternity leave shall be entitled to maternity leave not exceeding six months for any one pregnancy.

A female contributor who, has less than one year's continuous service with the same employer and whose employer has not been registered with the Regional Chamber, nor operating in the Industry, for less than one year, shall not qualify for the maternity leave set out in this sub-clause but shall instead be entitled to the maternity leave provisions as provided for in Section 25(1) of the Basic Conditions of Employment Act No. 75 of 1997 and all other provisions related to maternity leave in this clause shall apply to such employees.

- (2) During the period of maternity leave all the rights and obligations that the employee and the employer may have under the employment contract shall be suspended and no benefit shall accrue to the employee during this period except that -
- (a) provided she has complied with subclause (3)(a), (b), (c) and (d) hereunder, her service will be regarded as uninterrupted;
 - (b) the employer shall continue to pay - in the case of a Health Care Fund contributor, all Health Care Fund contributions as provided for in this part of the Agreement of the Council and, in the case of a Provident Fund contributor, all Provident Fund contributions as provided for in the Collective Agreement of the Provident Fund of the Regional Chamber - in respect of himself and of any employee on maternity leave while such employee is on such leave until -
 - (i) the employee breaches the provisions of this part of the Agreement by failing to notify her employer of her intended date of return to work as provided for in subclause (3)(b) below, unless good cause for such failure is shown; or
 - (ii) the employee breaches the provisions of this part of the Agreement by failing to return to work on the date as provided for in subclause 3(a) and (b) below, unless good cause for such failure is shown; or
 - (iii) the employee returns to work;

whichever occurs first.

Provided that an employer shall not be required to make the contributions outlined in sub-clause (2)(b) above, for an employee who has worked for the

F -72

same employer for less than one continuous year and whose employer has not been registered with the Regional Chamber, nor operating in the Industry for less than one year. Such employees shall, for the duration of their maternity leave, be entitled to utilise a Health Care Fund operated facility and shall also not be prejudiced with regard to any benefit to which they may be entitled to in terms of the Provident Fund Collective Agreement of the Regional Chamber.

- (3) At the end of the period of maternity leave the employee shall be entitled to resume her work in a position identical or similar, but not less favourable, to the one which she held prior to her taking maternity leave. This obligation on the employer to re-engage the employee is subject to and conditional upon the employee having complied with the following:
- (a) By completing a form as specified for such purpose by the Regional Chamber, at least one month before the date of commencement of her maternity leave: Provided that this requirement shall not apply in the event of the employee having to stop work, due to medical reasons, earlier than anticipated; and
 - (b) notifying her employer at least four weeks prior to her intended date of return to work of her intention to so return to work by completing a form as specified for such purpose by the Regional Chamber, or by any other written notification, and forwarding such form or notice to her employer per registered mail or by delivering such notice or form to a responsible officer of the employer and obtaining a written acknowledgment of receipt therefor; and
 - (c) returning to work and resuming her normal duties on the date stipulated in the form referred to in subclause 3(a), or by showing good cause why it was not possible to return to work on the stipulated date; and
 - (d) commencing her maternity leave not earlier than at 22 weeks of pregnancy and returning to work within the six month period or, where the maternity leave period expires during the employer's annual leave period or the return day falls on a public holiday, by returning to work on the first working day after the annual leave period or the public holiday.
- (4) Subject to the provisions of this part of the Agreement, no employer shall require or permit any female employee to work during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after the date of her confinement.
- (5) An employer shall be entitled to fill a position which has become vacant due to an employee having gone on maternity leave by employing another person on a fixed-term contract until the return of the employee from maternity leave. The fixed-term contract shall contain the provisions set out in the form specified for such purpose by the Regional Chamber, and shall be signed by both the employer and the temporary employee. The latter shall be remunerated at the wage prescribed in this part of the Agreement for the class in which he is employed.
- (6) Although the contract of employment of an employee may be terminated if she fails to comply with the provisions of subclause 3(a), (b), (c) and (d) above, such termination will not in any way whatsoever change the temporary nature of the fixed-term contract of employment of any other employee who may have been employed to fill her position.

31: NEGOTIATION OF PROCEDURES AT INDIVIDUAL ESTABLISHMENTS

- (1) An employer shall, at the request of the Trade Union, negotiate with the Trade Union at his establishment on procedures relating to-
 - (a) grievances;
 - (b) discipline;
 - (c) retrenchment;
 - (d) health and Safety.
- (2) The negotiations referred to in subclause (1) shall commence within 15 working days of the date of receipt of any such request.
- (3) This clause shall not detract from the right of an employer to act in a fair manner relating to the above matters, in the absence of negotiated procedures. This clause equally shall not detract from the right of an employee to be treated in a fair manner.

32: ACCESS

- (1) Trade Union officials shall be entitled to be granted reasonable access to establishments provided that prior permission, which shall not be unreasonably withheld is obtained from an official designated by the employer concerned.
- (2) If the designated official should be absent from the establishment for a period of four hours or longer the most senior official of the employer who may be present shall be deemed to be the designated official as from the beginning of the four-hour period.
- (3) Access shall be subject to any existing written access agreements signed by both the Trade Union and the individual employer concerned.
- (4) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.

33: SHOP STEWARDS

- (1) An employer shall recognise the right of the Trade Union to have shop stewards elected by its members at his establishment.
- (2) A shop steward recognition agreement at an establishment shall, on request by the Trade Union or the employer, be negotiated between the Trade Union and the employer. Negotiations shall commence within 15 working days of the date of receipt of such request.
- (3) Provided that an outline of each such training course has been lodged with Regional Chamber, and is available on request to any employer, shop stewards shall be entitled to four days' paid leave per annum per shop steward to attend shop stewards' training courses if such attendance falls within normal working hours.
- (4) In addition to the leave granted in (3) above, shop stewards shall be eligible for and have access to further paid leave to attend to trade union duties. This additional leave shall be calculated at six days per annum per shop steward. At each establishment this additional leave shall be pooled and the shop stewards shall be entitled to use the additional leave so pooled to attend to trade union duties in any manner that the trade union deems fit: Provided that in establishments employing five or fewer employees, the trade union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause.

F -74

- (5) Shop stewards at all establishments shall be granted reasonable facilities to enable them to carry out their legitimate trade union duties, provided that prior permission, which shall not be unreasonably withheld, shall be obtained from management.
- (6) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

34: RETRENCHMENT BENEFITS

- (1) An employer shall 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, unless the employer has been exempted from the provisions of this clause.
- (2) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer is not entitled to severance pay in terms of subclause (1).
- (3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable according to law.
- (4) If there is a dispute only about the entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the Regional Chamber, if the parties to the dispute fall within the registered scope of the Regional Chamber.
- (5) An employee who refers the dispute to the Regional Chamber shall satisfy the Regional Chamber that a copy of the referral has been served on all the other parties to the dispute.
- (6) The Regional Chamber shall attempt to resolve the dispute through conciliation.
- (7) If the dispute remains unresolved, the employee may refer it to arbitration.

35: PATERNITY LEAVE

Male employees, regardless of marital status, shall be entitled, subject to prior arrangement, to a maximum of three days' unpaid paternity leave per annum. The employer shall be entitled to require proof of paternity.

36. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT

- (1) The Council or Regional Chamber shall take all reasonable steps necessary to ensure compliance with this part of the Agreement. If, whether through its own investigations or through any other source, it appears as if the provisions of this part of the Agreement has been breached then the following procedure shall apply to enforce compliance:
 - (a) The General Secretary or Regional Secretary or relevant official of the Council or Regional Chamber shall appoint a designated agent to investigate the alleged breach and / or refer the matter to the Regional Chamber's Disputes Committee.
 - (b) If, upon completion of the investigation the designated agent or Disputes Committee has reason to believe that this part of the 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 Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this part of the Agreement through conciliation and the outcome thereof.
- (d) Upon receipt of the report, the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council may:
 - (i) require the designated agent to make further investigations; or
 - (ii) refer the matter to arbitration in terms of this part of the Agreement; or
 - (iii) take such other steps as may be deemed reasonable.
- (e) If the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council decides to refer the matter to arbitration, he must appoint an arbitrator to hear and determine the alleged breach of this part of the 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 Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary 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;

F -76

- (iv) to make any order as to costs that he deems appropriate and where the Act provides for such an order to be made or for the Council or Regional Chamber to recover its costs of providing the arbitration service, provided that :
- where the Council's or Regional Chamber'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 and/or Regional Chamber'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. Notice of the arbitration proceedings 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 part of the 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 or Regional Chamber.
- (k) The General Secretary of the Council or Regional Secretary of the Regional Chamber may apply to make the arbitration award an order of the Labour Court in terms of Section 158(1) of the Labour Relations 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 or Regional Chamber.

37: DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
- (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute

referred to the Council must be dealt with by the Council or the Regional Chamber.

- (b) The Council shall, from time to time, adopt, by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.
- (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same rights, powers and obligations as the Council.

(2) Accreditation

- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
- (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.

(3) Panel of conciliators, arbitrators and senior arbitrators

- (a) The Council shall appoint:
 - (i) a panel of conciliators, for the purpose of conciliating disputes;
 - (ii) a panel of arbitrators, for the purpose of determining disputes;
 - (iii) a panel of senior arbitrators, for the purpose of determining disputes where
 - (aa) the nature of the questions of law raised by the dispute;
 - (bb) the complexity of the dispute;
 - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
 - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
 - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.
 - (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.

F -78

- (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' lists shall 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 General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant 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 arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3)(d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
 - (i) for serious misconduct; or
 - (ii) owing to incapacity; or
 - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3)(c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3)(i), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

(4) *Dispute involving non-parties to the Council*

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council, shall be resolved by the Council in accordance with the following procedure-

(a) *Referral and conciliation of disputes:*

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.
- (iv) The conciliator may, during conciliation proceedings:
 - (aa) mediate the dispute;
 - (bb) conduct a fact-finding exercise; and
 - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4)(a)(iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

(b) *Adjudication of disputes referred to the Council for arbitration:*

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:
 - (aa) the Act requires that the dispute be arbitrated; or
 - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.

- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) 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 the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to:
 - (aa) give evidence;
 - (bb) call witnesses;
 - (cc) question the witnesses of any other party;
 - (dd) address arguments to the arbitrator;
 - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.
- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord, and without limiting the generality thereof, 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;
 - (bb) the award is ambiguous or contains an obvious error or omission;
 - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.

- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

(5) Disputes involving parties to the Council -

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to subclause 5 (d) below.
- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

(6) Compliance procedure and enforcement of collective agreements by Council -

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
 - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber;
 - (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may

F -82

endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by the Council, where these exist, by-

- (aa) publicising the contents of the agreement;
 - (bb) conducting inspections;
 - (cc) investigating complaints;
 - (dd) endeavouring to secure compliance with the agreement through conciliation; or
 - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
- (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
- (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
- (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclause 4(b)(v) to (4)(b)(xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
- (aa) ordering any person to pay any amount owing in terms of a collective agreement;
 - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
 - (cc) charging a party to the arbitration an arbitration fee;
 - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
 - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
 - (ff) any award contemplated in section 138(9) of the Act;

- (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of subclause (6) shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure shall stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

(7) Non-Compliance

- (a) Outsourcing to non-compliant companies shall not be permitted in the industry.
- (b) The parties shall enter into agreements with all Provincial and Local governments which shall have the effect that their sourcing from the Industry shall include a requirement to only source from companies which hold a valid Certificate of Compliance from the bargaining council.

(8) Compliance Promotion

- 8.1 All current non-compliant companies which meet a minimum of 80% of the party-to-party *negotiated wage rate* for current employees, shall be regarded as level B compliant, subject to sub-clause 8.2 below.
- 8.2 All companies described in 8.1 above shall achieve 100% wage compliance within a period of 18 months from 1 September 2012, in 6 monthly equal increments, failing which full compliance enforcement including the execution of writs shall apply to them.
- 8.3 The arrears of non-compliant companies shall be ring-fenced in a 'suspense account' at 100% of the verified arrears value and a written time-bound repayment plan agreed with the bargaining council. They should also sign a legally enforceable acknowledgement of debt.
- 8.4 The current policy that allows for a maximum of 6-months as a repayment period for arrears shall be amended, to allow for a maximum eighteen (18) months repayment period with effect from 1 November 2012.
- 8.5 The arrears will become payable in full should the employer become non-compliant, or default on the repayment plan at any time in future, unless otherwise agreed by the parties.
- 8.6 At every future meeting of the National Bargaining Council, each party shall make one practical concrete suggestion on how to further promote compliance in the industry.
- 8.7 The National Bargaining Council General Secretary shall have unfettered authority to serve any writ of execution upon any employer who fails to become compliant in terms of the new compliance provisions envisaged in this agreement, unless the parties agree otherwise.
- 8.8 Nothing in this agreement shall have the effect of downward migration of conditions of employment for any current employee.

CONTINUES ON PAGE 482—PART 4



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette

No. 10167

Regulasiekoerant

Vol. 586

Pretoria, 14 April 2014

No. 37509

PART 4 OF 5

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

- 8.9 The Trade Union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of this agreement."

38 : INDUSTRY PROTECTION FUND

- (1) In terms of section 28(1)(g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a Fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the Parties to the Regional Chamber, which programmes are aimed at protecting the industry in the Western Cape Sub-Chamber of the Cape Chamber of the Council, and jobs within it by improving its competitiveness in the fashion industry.
- (3) The Fund shall commence on 1 July 2001 and shall continue to operate until such date as the Regional Chamber and the Parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 12 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4), contribute an amount of 19 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.
- (7) The monies collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.

This account will be administered by the Regional Chamber.
- (8) The monies collected shall be used by the Regional Chamber to finance the following *bona fide* strategies in pursuit of the objects of the Fund as set out in sub-clause (2) -
 - (a) 'Buy Local' campaigns;
 - (b) Combating customs fraud and illegal imports.
 or for such other strategies that meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Cape Clothing Association (CCA) become or wish to become engaged in additional strategies or *bona fide* activities in pursuit of the objectives of the Fund other than those specified in sub-clause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber and subject to approval by the Registrar : Labour.

- (10) The Fund's monies shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the CCA is in doubt about whether contemplated expenditure of the Fund's monies qualifies as expenditure on an authorised activity, SACTWU or the CCA, as the case may be, may request confirmation in advance by the Regional Chamber in this regard.
- (12) No monies of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the CCA and the Regional Chamber have signed a written agreement, acceptable to the Registrar : Labour, to secure compliance with the provisions of the Fund as set out herein.
- (13) Any interest that is earned on Fund monies at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the CCA shall, annually, by the second month of the Regional Chamber's financial year, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan will be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the Parties will be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he is satisfied that the expenditure:
 - (a) is in terms of the approved plan;
 - (b) is clearly classified by strategy, activity and the nature of the expense; and
 - (c) has been authorised by the Regional Organising Secretary or National Organising Secretary of SACTWU, or the Executive Director of the CCA.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure will be presented to the Regional Chamber for approval prior to payment.

- (16) Any expenses that have been incurred by SACTWU or the CCA for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the CCA, may be recovered by the Regional Chamber from SACTWU or the CCA, as the case may be.
- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the CCA shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund.
- (19) In the event that there is a disagreement between the Parties as to whether any activity or expenditure or proposed activity expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.

- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

39 : TRADE UNION CAPACITY BUILDING FUND

- (1) Trade Union Capacity Building Fund, hereinafter referred to as "the Fund" is hereby established.
- (2) The Fund shall be administered by the Regional Chamber, or its successor in name and title, for and on behalf of the union and its members in terms of the rules of the Fund as approved by the Registrar : Labour.
- (3) Every employer shall, in respect of each employee for whom wages are prescribed in the Council's Main, Knitting Division and Country Areas Collective Agreements for the Western Cape Region, contribute an amount of 36 cents per week.
- (4) The total sum representing the employer's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.
- (5) All monies received by the Regional Chamber for and on behalf of the Fund, shall be paid monthly by the Regional Chamber into a banking account styled, the "Trade Union Capacity Building Fund" opened and administered by the Regional Chamber for the purpose of reimbursing it to the Union in terms of the rules of the Fund.
- (6) Monies in the Fund's banking account not required to meet the current reimbursements may be invested by the Regional Chamber as per the requirements of the Act.
- (7) Any interest that is earned on Fund monies shall accrue to the Fund and be used in terms of the rules of the Fund.
- (8) The accounts of the Fund shall be annually audited in terms of generally accepted auditing standards by the Council's auditors.
- (9) The Regional Secretary of the Regional Chamber shall report to the Regional Chamber on a quarterly basis on all expenditure of the Fund, including, but not limited to providing a schedule detailing the income collected and authorized reimbursements made to the Union and matters incidental thereto as may be requested by the Regional Chamber from time to time. The Union shall provide the Regional Secretary of the Regional Chamber, on a monthly basis, with the details of the expenditure incurred in this regard.
- (10) The audited annual financial statements of the Fund shall be signed by the Chairperson and Regional Secretary of the Regional Chamber and a relevant Union official and be submitted to the Department of Labour as per the requirements of the Act or any other regulations and conditions that may be set by the Registrar : Labour upon approval of the Fund's rules, or from time to time.

40 : COLLECTIVE BARGAINING/DISPUTE RESOLUTION LEVY

- (1) The parties to this part of the Agreement recognise that the Cape Clothing Association ("the CCA") is the majority employers' organisation in the region covered by the Western Cape Sub-Chamber of the National Bargaining Council for the clothing manufacturing industry ("the region"), that it incurs significant expenses during annual collective bargaining and by participating in dispute resolution, and that employers who

F -87

are not its members derive a benefit from these activities without contributing to the cost thereof. Accordingly the parties agree that every employer in the region, who is subject to this part of the Agreement, shall pay a monthly fee in an amount calculated in terms of sub clause (2) hereunder, on the following basis -

- (a) every employer that belongs to the CCA shall pay its membership fee directly to the CCA;
 - (b) every employer that does not belong to the CCA shall pay a monthly levy equal to the membership fee, that the employer would have paid if it were a member of the CCA, to the Regional Secretary of the Regional Chamber on or before the 14th day of each month, together with a breakdown of the amount so paid.
- (2) The amount of the monthly levy shall be as determined at a the general meeting of the CCA from time to time, which shall be identical to the monthly membership fee for ordinary members of the CCA.
 - (3) The Regional Secretary of the Regional Chamber shall deposit all monies received in terms of this clause into a separate, dedicated banking account in the name of the "CCA levy account".
 - (4) The Regional Chamber shall disburse monies from the account to the CCA on receipt of acceptable proof by the CCA of disbursements incurred by it as contemplated by clause 5 below.
 - (5) The monies received in terms of the provisions of this clause may be used only for expenditure incurred by the CCA in respect of:
 - (a) collective bargaining; and
 - (b) dispute resolution,and may not be:
 - (c) paid to a political party as an affiliation fee; or
 - (d) contributed in cash or kind to a political party or a person standing for election to any political office.
 - (6) The CCA shall arrange for an annual audit of the "CCA levy account" within six months of its financial year by an auditor who:
 - (a) shall be independent;
 - (b) shall conduct the audit in accordance with generally accepted auditing standards;
 - (c) shall report in writing to the CCA and to the Regional Chamber expressing an opinion as to whether or not the CCA has complied with the provisions of its constitution relating to financial matters and the provisions of sub clause (5).
 - (7) Any person may inspect the auditor's report submitted to the Regional Chamber in terms of sub clause (6) at the Regional Chamber's offices at Industria House, 350 Victoria Road, Salt River, Cape Town.
 - (8) The Regional Chamber shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.
 - (9) The Regional Chamber's exemption committee may on application from an employer who conscientiously objects to associating with persons other than those who share his

religious beliefs or who shows good cause, grant an exemption from the provisions of this clause.

- (10) Any dispute about the application, enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator agreed on by the parties to the dispute. Provided that if no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator shall be appointed by the Regional Chamber from its list of accredited conciliators / arbitrators.
- (11) No payment of levies by non-members shall be made in terms of this clause for any period that the CCA does not represent the employers who employ the majority of employees in the region for whom wages are prescribed in this part of the Agreement. The Regional Chamber shall forthwith inform all concerned if this should occur.
- (12) Despite the fact that this clause may have ceased to be operative or that the CCA may have lost its majority, the funds in the "CCA levy account" may continue to be disbursed until they have been exhausted.

41: FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2014: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 September 2013.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

42 : ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) The Council shall conduct a survey on the extent and type of contract work in the clothing industry.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.

43 : EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

Persons under the age of 15 years: No employer shall employ any person under the age of 15 years.

44 : TRADE UNION AGENCY SHOP

- (1) **Scope-** Agency fees will apply to employees who –
 - (a) are not members of the trade union party, but are eligible for membership thereof;
 - (b) are not bound by the provisions of the closed shop clause; and
 - (c) fall within the scope of this Agreement this part of the Agreement.
- (2) **Union membership:** Employees are not compelled to become members of the trade union party.
- (3) **Agency fee deductions:** Every employer to whom this clause applies shall:
 - (a) deduct from the wages of an employee an amount equivalent to the union subscription; and
 - (b) pay such monies to the Regional Secretary of the Regional Chamber within fourteen days of month-end in which the deductions fall due. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers by not later than the end of the month in which the fees were received.
 - (c) deduct the agency fee from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be –
 - (a) paid to a political party as an affiliate fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

45. PRODUCTIVITY

The Productivity Scheme which was agreed to is:

Contained in Annexure B.

- (1) The bargaining council shall establish a dedicated productivity unit to promote productivity issues in the industry, as part of the NBC's value-added services.
- (2) The bargaining council shall commission a feasibility study for the establishment of a training institute similar to the previous Clothing Industry Training Board (CITB), to be operated under the auspices of the bargaining council as part of the NBC's value-added services.
- (3) Absenteeism

- (i) The memorandum of Understanding as concluded between the parties on 14 June 2007 and implemented shall remain in effect for the duration of the Agreement only.
- (ii) Where companies' have introduced the productivity scheme as per the provisions of the absenteeism MOU, such schemes are extended for the duration of this agreement, subject to plant level agreements entered into and signed off.

46. HIV/AIDS

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment as set out in Annexure A to this agreement shall be policy in the industry.

World International HIV/AIDS Day

The industry acknowledges the importance of creating awareness of the HIV/AIDS pandemic. To this end, employers are encouraged to grant employees on World International HIV/AIDS Day thirty minutes paid time off to participate in awareness activities agreed to at industry level.

47. CONTRACT EMPLOYEES

Contained in Annexure D.

48. WORKING IN ARRANGEMENTS

Employees shall be permitted to work in the time lost due to strike action incurred during the September / October 2009 protected wage strike at normal rates of pay, provided that this is agreed to at plant level and further provided that where agreed, such employees shall be offered a loan equal to between one week and two weeks' wages, deductible from their wages in equal weekly amounts over a 10 week period.

ANNEXURE A**CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS
AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING
INDUSTRY OF SOUTH AFRICA****1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:
- eliminating unfair discrimination in the workplace based on HIV status;
 - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
 - promoting appropriate and effective ways of managing HIV in the workplace;
 - creating a balance between the rights and responsibilities of all parties.

2. OBJECTIVES

- 2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
- (i) creating a non-discriminatory work environment;
 - (ii) dealing with HIV testing, confidentiality and disclosure;
 - (iii) providing equitable employee benefits;
 - (iv) dealing with dismissals; and
 - (v) managing grievance procedures.

- 2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:
- (i) creating a safe working environment for all employers and employees;
 - (ii) developing procedures to manage occupational incidents and claims for compensation;
 - (iii) introducing measures to prevent the spread of HIV;
 - (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
 - (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:
- (i) between employers, employees and the trade union in the workplace; and
 - (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

3. POLICY PRINCIPLES

- 3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5 Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

4. APPLICATION AND SCOPE

- 4.1. All employers and employees within the clothing manufacturing industry, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this code, the term "workplace" should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.
- 4.3. This Code, however, does not impose any legal obligation in addition to those in the Employment Equity Act, the Labour Relations Act and this code, or in any other legislation referred to in the Code.

- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

5. LEGAL FRAMEWORK

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:

- (i) Employment Equity Act, No. 55 of 1998;
- (ii) Labour Relations Act, No. 66 of 1995;
- (iii) Occupational Health and Safety Act, No. 85 of 1993;
- (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
- (v) Basic Conditions of Employment Act, No. 75 of 1997; and
- (vi) Medical Schemes Act, No. 131 of 1998.
- (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.

- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.

- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.

5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.

5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.

5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.

5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).

5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.

5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

- 5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].
- 5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT

- 6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:
- (i) recruitment procedures, advertising and selection criteria;
 - (ii) appointments, and the appointment process, including job placement;
 - (iii) job classification or grading;
 - (iv) remuneration, employment benefits and terms and conditions of employment;
 - (v) employee assistance programmes;
 - (vi) job assignments;
 - (ix) training and development;
 - (x) performance evaluation systems;
 - (xi) promotion, transfer and demotion;
 - (xiii) termination of services.
- 6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:
- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
 - (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
 - (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
 - (iv) providing support for all employees infected or affected by HIV and AIDS; and
 - (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE

7.1. HIV Testing

- 7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

- 7.1.2. Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts. ^{1[1]}
- 7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out in item
- 7.1.4. Authorised testing
- Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:
- (i) during an application for employment;
 - (ii) as a condition of employment;
 - (iii) during procedures related to termination of employment;
 - (iv) as an eligibility requirement for training or staff development programmes; and
 - (v) as an access requirement to obtain employee benefits.
- 7.1.5. Permissible testing
- (a) An employer may provide testing to an employee who has requested a test in the following circumstances:
 - (i) As part of a health care service provided in the workplace;
 - (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
 - (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.
 - (b) Furthermore, such testing may only take place within the following defined conditions:
 - (i) At the initiative of an employee;
 - (ii) Within a health care worker and employee-patient relationship;
 - (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
 - (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.
- 7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.
- 7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

^{1[1]} The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the National Bargaining Council for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

- 7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.^{2[2]} Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

7.2. Confidentiality and Disclosure

- 7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.
- 7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.
- 7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:
- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
 - (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
 - (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

8. PROMOTING A SAFE WORKPLACE

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:
- (i) the risk, if any, of occupational transmission within the particular workplace;
 - (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
 - (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
 - (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
 - (v) the procedures to be followed in applying for compensation for occupational infection;
 - (vi) the reporting of all occupational accidents; and
 - (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

^{2[2]} See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
- (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.

- 9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

10. EMPLOYEE BENEFITS

- 10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits
- 10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

11. DISMISSAL

- 11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.
- 11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

12. GRIEVANCE PROCEDURES

- 12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.
- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.

- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

13. MANAGEMENT OF HIV IN THE WORKPLACE

- 13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:

13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and

13.1.2. Long and short term measures to deal with and reduce this impact, including:

- (i) An HIV/AIDS Policy for the workplace
- (ii) HIV/AIDS Programmes, which would incorporate:
 - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
 - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
 - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE

- 14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.

14.2. Broadly, impact assessments should include:

- (i) Risk profiles; and
- (ii) Assessment of the direct and indirect costs of HIV/AIDS;

14.3. Risk profiles may include an assessment of the following:

- (i) The vulnerability of individual employees or categories of employees to HIV infection;
- (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
- (iii) A profile of the communities from which the organisation draws its employees;
- (iv) A profile of the communities surrounding the organisation's place of operation; and
- (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.

14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:

- (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
- (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;

- 14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE

15.1. A Workplace HIV/AIDS Policy

- 15.1.1. Every workplace should develop an HIV/AIDS policy^{3[3]}, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;
- (ii) an outline of the HIV/AIDS programme;
- (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);
- (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
- (v) grievance procedures in line with item 12 of this Code;
- (vi) set out the means of communication within the organisation on HIV/AIDS issues;
- (vii) details of employee assistance available to persons affected by HIV/AIDS;
- (viii) details of implementation and coordination responsibilities; and
- (ix) monitoring and evaluation mechanisms.

- 15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including the trade union, employee representatives, occupational health staff and the human resources department.

- 15.1.3. The policy should reflect the nature and needs of the particular workplace.

- 15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:

- (i) communicated to all concerned;
- (ii) routinely reviewed in light of epidemiological and scientific information; and
- (iii) monitored for its successful implementation and evaluated for its effectiveness.

15.2. Developing Workplace HIV/AIDS Programmes

- 15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

- 15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:

- (i) hold regular HIV/AIDS awareness programmes;
- (ii) encourage voluntary testing;
- (iii) conduct education and training on HIV/AIDS;

^{3[3]} This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

- (iv) promote condom distribution and use;
- (v) encourage health seeking behaviour for STD's;
- (vi) enforce the use of universal infection control measures;
- (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
- (viii) endeavour to establish a wellness programme for employees affected by HIV/AIDS;
- (ix) provide access to counselling and other forms of social support for people affected by HIV/AIDS;
- (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
- (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4
- (xii) regularly monitor, evaluate and review the programme.

15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

16. INFORMATION AND EDUCATION

- 16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.
- 16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.

F101

GLOSSARY

<i>Affected employee</i>	an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive
<i>AIDS</i>	AIDS is the acronym for "acquired immune deficiency syndrome". AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
<i>Epidemiological</i>	The study of disease patterns, causes, distribution and mechanisms of control in society.
<i>HIV</i>	HIV is the acronym for "human immuno deficiency virus". HIV is a virus which attacks and may ultimately destroy the body's natural immune system.
<i>HIV testing</i>	taking a medical test to determine a person's HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of 'risk behaviour' (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee's or job applicant's HIV status.
<i>HIV positive</i>	having tested positive for HIV infection.
<i>Infected employee</i>	an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
<i>Informed consent</i>	a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
<i>Policy</i>	a document setting out an organisation's position on a particular issue.
<i>Pre and post test counselling</i>	a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
<i>Reasonable Accommodation</i>	means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
<i>STDs</i>	acronym for "sexually transmitted diseases". These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.
<i>Surveillance Testing</i>	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

ANNEXURE B**PRODUCTIVITY****The following provisions shall be applicable to the plant level productivity incentive schemes:**

- (1) Employers shall pay an amount of 0.5% of the weekly wage into a dedicated productivity incentive bank account. This must be done on a weekly basis or on the date that wages is normally paid, if it is paid at a time other than weekly.
- (2) The money in this productivity incentive bank account is ringfenced for the introduction of plant level productivity incentive schemes only.
- (3) This productivity incentive scheme bank account shall be opened and authorised on the basis of co-signatures, as follows: a person nominated by management plus a SACTWU shop steward (where there are no shop stewards at a workplace, a representative nominated by the workers shall be the second signatory).
- (4) With effect from 1 September 2008, each workplace shall have a period of 2 months within which they must reach agreement between management and the union about how the productivity incentive scheme at that workplace will function and how the incentives are to be paid.
- (5) If there is no productivity incentive scheme agreement reached by 1 November 2008, all the monies in the productivity bank account must be paid out to the workers as part of their wages, until an agreement on an appropriate productivity incentive scheme is reached.
- (6) The productivity incentive scheme agreements reached must ensure that all workers covered by the terms of this agreement, not just some, shall benefit from the incentive scheme.
- (7) All productivity scheme agreements reached must be registered with the National Bargaining Council for the Clothing Manufacturing Industry, within 1 month after agreement has been reached.
- (8) Productivity incentive scheme agreements shall not contain any provisions, which have the effect of downward variation of any term or condition of employment.
- (9) The productivity incentive scheme envisaged in this agreement shall be in addition to and not in place of any existing productivity incentive scheme, which may currently exist.
- (10) If the workplace closes or is liquidated, all the money left in the productivity incentive bank account must be paid out to the employees at that workplace and who are covered by the terms of this agreement.

F103

ANNEXURE D**CONTRACT EMPLOYEES**

- (1) Those contract employees with 12 months' or more employment with the same employer shall be converted into permanent employees.
- (2) All contract employees shall be entitled to receive a pro-rata share of all statutory payments due to permanent employees.
- (3) All contract employees who are in employ as at the end of November each year shall be entitled to full payment for all public holidays which fall during the annual shutdown period.
- (4) Employees who have completed a learnership shall not be placed on a further contract period after the completion of such a learnership, but shall be employed as a permanent fulltime employee.
- (5) Where there are more beneficial arrangements (other than those set out in sub-clauses (1) to (4) above) governing the employment of contract workers, such provisions shall remain effective.

PART G:

**CONSOLIDATED
AGREEMENT**

FOR THE

**WESTERN CAPE
REGION**

(COUNTRY AREAS)

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY**NATIONAL MAIN COLLECTIVE AGREEMENT**

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

Cape Clothing Association

Coastal Clothing Manufacturers' Association

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

¹South African Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' 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 National Bargaining Council for the
Clothing Manufacturing Industry.

¹ *This Employer association has not signed the 2013/2014 Party-to-Party Agreement, however, remains an Employer Party to the Bargaining Council and, hence, is reflected on this page.

1. SCOPE OF APPLICATION

The terms of this Agreement shall be observed in the Clothing Manufacturing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

- Part A Provisions for the Eastern Cape Region
- Part B Provisions for the Free State and Northern Cape Region
- Part C Provisions for the KwaZulu-Natal Region
- Part D Provisions for the Northern Region (Clothing)
- Part E Provisions for the Northern Region (Knitting)
- Part F Provisions for the Western Cape Region (Clothing)
- Part G Provisions for the Western Cape Region (Country Areas)
- Part H Provisions for the Western Cape Region (Knitting)
- Part I Provisions for the Non-Metro Areas

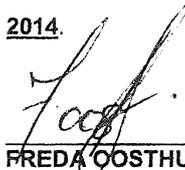
by the employers and employees in the Clothing Industry who are members of the employers' organisations and the trade union, respectively.

2. PERIOD OF OPERATION OF THIS AGREEMENT

- (1) This agreement is binding on the parties hereto from 1 September 2013 until 31 August 2017 unless the parties agree otherwise in writing.
- (2) The parties record that they intend to request the Minister of Labour to extend this agreement to non-parties in the Clothing Industry in terms of section 32 of the Labour Relations Act 66 of 1995. The period of operation of this agreement in respect of non-parties will be determined by the Minister.

Original Agreement signed at **CAPE TOWN** on behalf of the Parties the **24TH** day of **FEBRUARY**

2014.



FREDA OOSTHUYSEN
Chairperson



MARTHIE RAPHAEL
Vice-Chairperson



SICELO NDUNA
General Secretary

PART G : PROVISIONS FOR THE WESTERN CAPE REGION (COUNTRY AREAS)**1: SCOPE OF APPLICATION OF AGREEMENT OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed in the Clothing Industry-
- (a) by the employers and the employees who are members of the employers' organisations and the trade union, respectively;
 - (b) in the Magisterial Districts of George and Worcester.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall-
- (a) apply only in respect of employees for whom wages are prescribed in this part of the Agreement;
 - (b) not apply to employees and working directors whose wages are more than R66 666.00 per annum;
- (3) Clauses 1 (1) (a), 2, 11 (4) (b), 14 (1), 26 (13) (a) to (13) (g) (v) and 37 (5) of this part of the Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.
- (4) The Table of Contents of this Part F of the Main Collective Agreement is as follows:

CLAUSE NO.	DESCRIPTION
1.	SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT
2.	PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT
3.	DEFINITIONS.....
4.	WAGES
5.	PAYMENT OF WAGES
6.	TIME RECORDS
7.	WAGE INCENTIVES, PIECE-WORK AND TASK-WORK.....
8.	PROPORTION OR RATION OF EMPLOYEES
9.	ORDINARY HOURS OF WORK, MEAL INTERVALS AND REST INTERVALS
10.	OVERTIME.....
11.	PAYMENT FOR OVERTIME AND WORK ON SATURDAYS, SUNDAYS AND PUBLIC HOLIDAYS
12.	SHORT-TIME
13.	PROVISION OF TEA AND OTHER BEVERAGES
14.	CLOSED SHOP
15.	ANNUAL LEAVE AND PAID PUBLIC HOLIDAYS
16.	ENGAGEMENTS, TERMINATIONS, ABSENCES FROM WORK AND TRANSFERS IN OCCUPATION
17.	RECORD CARDS AND AGREEMENT.....
18.	TERMINATION OF EMPLOYMENT
19.	EXEMPTIONS.....
20.	SEATING ACCOMMODATION

21.	TOOLS AND MATERIALS.....
22.	EXPENSES OF THE COUNCIL AND REGIONAL CHAMBER.....
23.	TRADE UNION REPRESENTATIVES ON THE REGIONAL CHAMBER.....
24.	POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE OF AND IN TERMS OF THIS PART OF THE AGREEMENT.....
25.	OUTWORK AND DISCLOSURE OF EMPLOYERS' PATTERNS ETC.....
26.	CLOTHING INDUSTRY HEALTH CARE FUND.....
27.	TRADE UNION SUBSCRIPTIONS.....
28.	REGISTRATION OF EMPLOYERS.....
29.	WAGE GUARANTEE.....
30.	MATERNITY LEAVE.....
31.	NEGOTIATION OF PROCEDURES AT INDIVIDUAL ESTABLISHMENTS.....
32.	ACCESS.....
33.	SHOP STEWARDS.....
34.	RETRENCHMENT BENEFITS.....
35.	PATERNITY LEAVE.....
36.	PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT ..
37.	DISPUTE PROCEDURE.....
38.	INDUSTRY PROTECTION FUND.....
39.	TRADE UNION CAPACITY BUILDING FUND.....
40.	COLLECTIVE BARGAINING/DISPUTE RESOLUTION LEVY.....
41.	FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION.....
42.	ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING.....
43.	EMPLOYMENT OF CERTAIN PERSONS PROHIBITED.....
44.	TRADE UNION AGENCY SHOP.....
45.	PRODUCTIVITY (Annexure B).....
46.	HIV/AIDS (Annexure A).....
47.	CONTRACT EMPLOYEES (Annexure D).....
48.	WORKING IN ARRANGEMENTS.....

2: PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

3: DEFINITIONS

Any expressions used in this part of the Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendment to such Act, and, unless the contrary intention appears, words importing the masculine gender shall include the feminine and the singular shall include the plural and vice versa; further, unless inconsistent with the context-

"Act" means the Labour Relations Act, 1995;

"blocker" means an employee who blocks men's and boys' hats or caps;

"boiler attendant" means an employee engaged in firing a boiler and maintaining the water level and steam pressure;

"casual employee" means an employee who is employed by an employer on not more than three days in any week and who is engaged in one or more of the following duties or capacities:

- (a) general gardening work;
- (b) loading or unloading;
- (c) clearing bush;
- (d) washing vehicles or windows;

"clerk" means an employee who is engaged in-

- (a) writing, typing and filing;
- (b) operating a calculating or a punch-card machine;
- (c) any other form of clerical work;

and includes a cashier, despatch clerk, mannequin, storeman, telephone switchboard operator and work-study clerk but does not include any other class of employee elsewhere defined in this clause, notwithstanding the fact that clerical work may form part of such employee's work;

"clicker" means an employee who cuts parts of garments from dies using a mechanical or hydraulic press;

"Clothing Industry" or "Industry" means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear; nightwear (including pyjamas), outerwear, protective wear (including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties), and underwear;

A. and includes-

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;

- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of buttonholes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is (are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

B. but excludes-

- (a) belts, braces, garters, suspenders and armlets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

"clothing machine mechanic" means an employee who is engaged in servicing, repairing or adjusting machinery, equipment or installations in any establishment;

"clothing technician" means an employee who is employed for the purpose of being trained in all facets of the Industry, who is registered as such with the Regional Chamber and who may perform any of the duties of the different classes of employees for whom wages are specified in

clause 4 of this part of the Agreement;

"complying employer" means an employer which is registered with the Council and which has registered all permanent and contract employees with the Council, and which has given effect to all collective agreements of the Council which are applicable to it in each of its establishments, or which has received exemption from any collective agreement to the extent of such exemption;

"conveyor" means any type of moving mechanical apparatus which feeds work to employees at a predetermined rate or a predetermined interval;

"Council" means the National Bargaining Council for the Clothing Manufacturing Industry, registered in terms of section 29 of the Labour Relations Act, 1995;

"cutter" means an employee, other than an interlining cutter, trimmer, leather cutter or tie cutter who is engaged in cutting material with any power-driven cutting machine, knife or shears, but excluding any cutting operations referred to in the definitions of Grade A and B employees, and Grade C employees;

"day worker" means an employee who is not a shift worker;

"dealer" or **"general dealer"** means a person or persons who hold a licence under item 3 of the First Schedule to the Registration and Licensing of Business Ordinance;

"dependant" means, for the purposes of the Clothing Industry Health Care Fund, any of the following persons:

- (a) The declared spouse of the contributor living at the same address;
- (b) the unmarried children under the age of 18 of the contributor, including natural offspring, stepchildren or adopted children;
- (c) the unmarried children of the contributor, including natural offspring, stepchildren or adopted children, over the age of 18 but under the age of 25, who are at school or who are full-time students at a tertiary institution or who are physically or mentally disabled;

whose admittance to membership of the Fund is at the sole discretion of the Health Care Fund Management Committee;

"despatch packer" means an employee who is wholly or mainly engaged in making up parcels or bales in readiness for transport or delivery;

"establishment" means any place in which the Clothing Industry is carried on; "experience" means-

- (a) category (1)-in relation to clerks and factory clerks, the total period or periods of employment which such employees have had as clerks and factory clerks, as the case may be, irrespective of the trade in which such experience was gained;
- (b) category (2)-in relation to employees other than clerks, factory clerks, clothing-machine mechanics, motor-vehicle drivers, boiler attendants, despatch packers, travellers' drivers, watchmen or caretakers, labourers and general workers, the total period or periods of employment of employees in the Clothing Industry in any capacity other than that of clerks, factory clerks, clothing-machine mechanics, motor-vehicle drivers, boiler attendants, despatch packers, travellers' drivers, watchmen or caretakers, labourers and general workers;
- (c) category (3)-in relation to clothing-machine mechanics, the total period or periods of employment which such employees have had as clothing machine mechanics;

- (d) category (4)-in relation to supervisors, quality controllers and instructors, the total period or periods of employment which such employees have had as supervisors, quality controllers and instructors:

Provided that where any employee with less than one year's experience has not been re-employed in the Industry within a period of five years from the date on which he was last employed in the industry, any experience gained shall be ignored for the purpose of calculating the minimum wage at which he may commence service;

"factory clerk" means an employee who is engaged in one or more of the following duties or capacities:

- (a) calculating piece-work or bonus payments from production schedules;
- (b) checking attendance records or recording particulars of employees at work or absent from work; preparing wage cards or envelopes for subsequent use by another employee;
- (c) checking or recording for production control;
- (d) copying invoices or other documents by machine or hand;
- (e) issuing machine parts, tools, oil and other equipment from a workshop store and/or recording same;
- (f) issuing material, lining, canvas, trimming, buttons, cotton and zips to the different departments of an establishment and/or recording same;
- (g) issuing trimming, lining cotton and zips to employees of an establishment from a sub-store and/or recording same;
- (h) receiving into stock, goods, material, trimming, tools and other equipment and checking goods received against specifications of goods ordered such as quantity, size and quality;
- (i) recording particulars of materials or general stores consumed or to be consumed or keeping stock records;
- (j) recording particulars of waste:

Provided that a calculator may be used in carrying out one or more of the above duties;

"general worker" means an employee engaged in one or more of the following duties or capacities:

- (a) carrying, moving or stacking articles;
- (b) delivering letters, messages or goods outside the factory premises on foot or by means of bicycle, tricycle or hand-propelled vehicle;
- (c) folding and/or inserting mail, affixing postage stamps or labels for posting;
- (d) making tea or similar beverages, snacks or sandwiches and washing cups, saucers and kitchen utensils;
- (e) marking, branding, stencilling or affixing labels on boxes, bales or other containers by hand;

G - 7

- (f) opening or closing doors, unpacking boxes, packages, bales or other containers;
- (g) operating a duplicating and/or addressograph and/or franking machine;

"Grade A employee", for the purposes hereof, means an employee who is engaged in one or more of the duties or capacities defined below:

- (a) **"belt shaper"** means an employee who is engaged in-
 - (i) cutting belt blanks from any type of material;
 - (ii) trimming and shaping belt blanks after glueing;
- (b) **"colour weigher"** means an employee who prepares chemicals, colouring materials and dyes according to given formulae for subsequent use in various processes;
- (c) **"embroidery artist"** means an employee who designs embroidery patterns;
- (d) **"fitter up"** means an employee who takes the outside of garments together with the cut-out linings (called trimmings) and adjusts the outsides and insides together accurately so that the parts may go forward to the machine to be put together correctly;
- (e) **"handyman"** means an employee who makes minor repairs or effects renovations to buildings, fixtures and fittings and who covers ironing and pressing machines or tables with any type of material;
- (f) **"presser"** means an employee who is engaged in the pressing of finished garments by machine, but who is not engaged in the ironing of garments;
- (g) **"pleating-machine setter"** means an employee who sets an automatic pleating machine;
- (h) **"shaper"** means an employee who shapes designs of lapels and collars of coats preparatory to underbasting; and includes those screen printing operations defined below;

Screen Printing Operations

- (i) **"negative maker"** means an employee who prepares photographic negatives, separates colours in a design, paints onto clear film sheet in repeat with exact reference marks, as part of the preparation of screens for screen printing;
- (j) **"screen maker (engraver)"** means an employee who engraves and cures screens;
- (k) **"screen printer"** means an employee who is engaged in-
 - (i) carrying out checks for faults;
 - (ii) checking the base fabrics to ensure correct face and quality;
 - (iii) examining screens from wash bays to ensure that they are in a satisfactory condition;
 - (iv) operating a screen-printing machine;
 - (v) positioning colour in correct sequence to ensure that colour combination matches the master feeler and colour card;

- (vi) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;
- (vii) setting up screens in sequence of colour to be printed on fabric;
- (viii) squaring off and testing that screens fit according to the master feeler;
- (ix) supervising the handling of screens to and from wash bays;
- (x) supervising the operations of the colour thrower;

"Grade B employee", for the purposes hereof, means an employee who is engaged in one or more of the duties or capacities defined below:

- (a) **"assistant colour weigher"** means an employee who assists a colour weigher;
- (b) **"baster"**, including outbaster, means an employee who is engaged in handsewing in setting a coat or parts of a coat into position preparatory to other operations and/or underbasting, i.e., handsewing linings of coats into position preparatory to sewing to edge seams;
- (c) **"bowmaker"** means an employee who makes bows for dresses;
- (d) **"bra moulder"** means an employee who operates a bra-moulding machine and performs one or more of the following operations:
 - (i) Selects, inserts or fits appropriate bra-cup mould into machine;
 - (ii) sets heat and dwell time;
 - (iii) sets depth of mould;
 - (iv) places material in position;
- (e) **"bra shaper"** means an employee who shapes moulded bra cups singly or in quantity;
- (f) **"cap framer"** means an employee who puts stiffener, wire and pad or lining into cap;
- (g) **"chaser"** means an employee who searches and locates garments or orders in an establishment and who may organise orders through the establishment;
- (h) **"conveyor-feeder"** means an employee who is responsible for feeding prepared parts of garments onto a conveyor for further operations and who may be assisted by one or more sorters;
- (i) **"cook"** means an employee who is engaged in preparing meals and cooking;
- (j) cutting individual ties by hand;
- (k) **"design room assistant"** means an employee who assists employees in the design room in one or more of the following duties or capacities:
 - (i) Fetching or taking patterns, garments, parts of garments, cotton, cloth or trimmings to and from the different departments in the establishment;
 - (ii) cutting out patterns after they have been marked out by pattern makers or pattern graders;
 - (iii) stamping identification details such as size, style and season on cut-out patterns.

G - 9

- (l) **"embroidery machinist"** means an employee who operates an embroidery machine and who threads up, adjusts tension and checks and/or examines work under needles;
- (m) embroidering and/or beading by hand.
- (n) **"factory shop assistant"** means an employee who serves and assists customers and who may select, wrap and receive payment for goods sold;
- (o) **"finisher"** means an employee who performs one or more of the following operations by hand:
 - (i) Putting pads or wadding into shoulders of coats;
 - (ii) fastening or "serging" sleeve-heads;
 - (iii) wadding sleeve-heads;
 - (iv) felling silk facing already basted in position;
 - (v) making buttonholes by hand;
 - (vi) felling sleeve-head linings, holding in such position with fingers;
- (p) **"hand-patent turner"** means an employee who is engaged in turning out or turning over the edge of collars, bands, cuffs, tabs or pockets with the use of a hand-iron;
- (q) **"ironer"** means an employee who is engaged in-
 - (i) ironing and folding garments;
 - (ii) ironing and folding and pinning garments;
 - (iii) ironing jackets and fly linings;
 - (iv) steaming garments on dummy;
 - (v) ironing embroidered T-shirts by means of a domestic-type ironing machine;
- (r) **"laboratory assistant"** means an employee who prepares samples and who may make initial and routine tests and record the results thereof;
- (s) **"lace cutter"** means an employee who is engaged in laying up and cutting lace according to a pattern;
- (t) **"lace machinist"** means an employee who operates an automatic lace-sewing machine;
- (u) **"machinist"** means an employee who performs by sewing machine any operation in the making of clothing;
- (v) **"matcher"** means an employee who matches and marks pocket flaps and patches according to fabric pattern;
- (w) **"measurer and marker"** means an employee who measures and marks trouser waists;
- (x) **"measurer and trimmer"** means an employee who measures and trims linings of coats and jackets;

- (y) **"fabric inspector"** means an employee who measures fabric and operates an inspection machine;
- (z) **"order checker"** means an employee who checks assembled orders;
- (aa) **"passer"** means an employee who examines the finished garments or parts thereof for flaws;
- (ab) **"pattern copier"** means an employee who copies master patterns, excluding the construction thereof, in pleating process;
- (ac) powdering lays from perforated master lays and perforating lays with a tracing wheel;
- (ad) **"re-cutter"** means an employee who is engaged in-
 - (i) cutting repairs and/or replacements, including time spent in searching for and matching up cloth;
 - (ii) re-cutting dress fronts after embroidery;
- (ae) **"shrinking press operator"** means an employee who operates a shrinking press to keep the same pattern;
- (af) **"steambox operator"** means an employee who is engaged in putting prepared formers in a steambox and taking them out again in a hand or loom-pleating process; and includes those screen printing operations defined below;

Screen Printing Operations

- (ag) **"assistant screen maker (engraver)"** means an employee who assists a screen maker (engraver);
- (ah) **"assistant screen printer"** means an employee who assists a screen printer and who may screen print by hand;
- (ai) **"dark room assistant"** means an employee who makes photographic positives of clear sheets of design colours and masks positives for repeat;
- (aj) **"mixing and filtering operator"** means an employee who is engaged in-
 - (i) cleaning and preparing drums returned from printing machines;
 - (ii) cleaning mixing equipment;
 - (iii) ensuring thorough mixing and blending of dyes and auxiliaries;
 - (iv) filtering mixed dyes;
 - (v) handling drums from mixers to filter machines;
 - (vi) operating a high-speed stirrer;
 - (vii) operating a tub washer;
 - (viii) removing solid or foreign articles from print paste;
 - (ix) supplying clean drums to colour weighers;
 - (x) transferring identifying labels to drums of dye;

G -11

(ak) **"oven-curing operator"** means an employee who is engaged in drying and curing parts of garments after the printing operation;

(al) **"screen controller"** means an employee who is engaged in-

- (i) applying masking tape set for automatic printing machines;
- (ii) checking for faults and rectifying same;
- (iii) clearing blockages by means of a high-pressure gun;
- (iv) painting in any open motif pinholes;
- (v) painting in masking and making trial print proof;
- (vi) placing screens in the rack ready for use;
- (vii) putting end rings into rotary screens;
- (viii) retouching screens;

(am) **"screen preparer"** means an employee who is engaged in-

- (i) coating screens;
- (ii) fitting gauze to frames;
- (iii) operating a stretching machine;
- (iv) placing screens in conditioning chamber;
- (v) preparing and checking screen frames;
- (vi) removing grease from screens;

(an) **"squeegee preparer"** means an employee who makes and prepares squeegees;

and includes an employee not elsewhere specified in this part of the Agreement;

"Grade C employee", for the purposes hereof, means an employee who is engaged in one or more of the duties or capacities defined below:

(a) **"belt operator"** means an employee who is engaged in-

- (i) bending belt buckles;
- (ii) covering buckles by hand or machine;
- (iii) ironing belts;
- (iv) pressing buckle prongs onto buckles;
- (v) punching holes for buckles and prongs;
- (vi) riveting belt buckles;
- (vii) stapling buckles onto belts;
- (viii) trimming and cleaning belts after machining;

- (b) **"bias-binding cutter"** means an employee who is engaged in cutting bias binding;
- (c) **"bobbin winder"** means an employee who is engaged in winding bobbins;
- (d) **"box assembler"** means an employee who is engaged in folding cardboard into containers for garments;
- (e) **"bra fuser"** means an employee who is engaged in-
 - (i) spraying and fusing together two bra-cup fibre fillers;
 - (ii) spraying fusing material on to bra-cup fibre filler and fusing;
- (f) **"bra marker"** means an employee who places a moulded bra cup on a form and pattern over a cup and marks the bra cup;
- (g) **"button coverer"** means an employee who is engaged in covering buttons by hand or machine;
- (h) **"cap fastener"** means an employee who is engaged in putting fasteners on caps;
- (i) **"cleaner"** means an employee who is engaged in cutting or trimming off loose ends of cotton or cloth left on garments or parts of garments or embroidery by previous operators;
- (j) **"collar/cuff trimmer"** means an employee who is engaged in trimming collars, cuffs, flaps and pockets by knife, scissors, guillotine or contour machine;
- (k) **"crimper"** means an employee who is engaged in crimping the seams of collars and cuffs prior to machining;
- (l) **"embroidery cleaner"** means an employee who cuts off threads from embroidery;
- (m) **"embroidery framer"** means an employee who inserts fabric into frames and removes embroidery from frames and who loads or unloads frames onto and from a machine;
- (n) **"embroidery marker"** means an employee who marks embroidery designs on fabric;
- (o) eyelet punching and letting;
- (p) fitting garments on models but excluding marking, measuring or cutting off of material;
- (q) **"folder"** means an employee who is engaged in folding and/or buttoning up garments, placing a shirt on a frame, inserting neck stiffener and folding the shirt;
- (r) **"foundation-garment operator"** means an employee who is engaged in-
 - (i) assembling inner and outer bra cups by hand;
 - (ii) assembling suspenders or shoulder straps by hand;
 - (iii) cutting and capping steels, bones or wires;
 - (iv) cutting individual girdle blanks;
 - (v) cutting lace, elastic, ribbon or shoulder straps into required lengths (excluding cutting from lays or according to pattern);

G -13

- (vi) folding and rolling bias binding by means of automatic machine;
- (vii) inserting bones or wires by hand;
- (viii) ironing girdle or corset panels;
- (ix) ironing partly-assembled bra cups;
- (x) pasting, sticking or pinning panels on girdle blanks;
- (xi) riveting hooks and eyes and swedging buckles and press studs;
- (s) **"fuser"** means an employee who is engaged in-
 - (i) feeding parts into an automatic fusing press;
 - (ii) ironing on fusible interlining with a hand-iron;
 - (iii) loading and unloading racks;
 - (iv) operating a semi-automatic fusing machine or press;
 - (v) positioning and spot-fusing fusible interlining with a special machine;
- (t) **"label printer"** means an employee who is engaged in printing or writing labels;
- (u) **"lace burner"** means an employee who separates lace into two sections by means of a hot needle;
- (v) **"line feeder"** means an employee who is engaged in feeding and/or collecting work, garments, parts of garments, cotton, trimmings, cartons, boxes and labels on the line or in a department of an establishment;
- (w) **"marker"** means an employee who is engaged in marking the position of pockets, flaps, vents, buttons or buttonholes and cuts the mouth of pockets;
- (x) **"mitre trimmer"** means an employee who is engaged in marking and trimming mitres on chokers or cravats;
- (y) **"packer"** means an employee who is engaged in-
 - (i) attaching belts to skirts or trousers;
 - (ii) assembling garments into bundles or orders prior to their being sent to the despatch department;
 - (iii) attaching swing or identification tickets to garments;
 - (iv) bagging garments;
 - (v) packing garments into boxes or other suitable wrapping;
 - (vi) sorting garments;
- (z) **"parts examiner"** means an employee who is engaged in examining cut and/or uncut parts of lays;
- (aa) **"parts ironer"** means an employee who is engaged in-
 - (i) ironing crease lines on cuffs and fronts of shirts;

- (ii) ironing cuffs and collars by means of a small pressing machine;
 - (iii) ironing loose collars;
 - (iv) ironing seams of ties, including bow ties;
 - (v) re-ironing garments which have already been folded and ironed;
- (ab) **"plain sewer"** means an employee who is engaged in performing the following operations by hand-
- (i) fastening catches in tops of trousers;
 - (ii) fastening facings inside already basted in position;
 - (iii) fastening edge stays;
 - (iv) fastening permanent turn-ups;
 - (v) felling, bindings;
 - (vi) felling bottoms;
 - (vii) felling bottoms of linings or seams of same already basted in position;
 - (viii) felling crutch linings in trousers;
 - (ix) felling necks or armholes of vests;
 - (x) felling waistband linings or parts thereof;
 - (xi) making and sewing on hangers;
 - (xii) making canvases;
 - (xiii) paddling collars or lapels;
 - (xiv) putting on bridles by hand;
 - (xv) sewing on buttons by hand;
 - (xvi) sewing on hooks and eyes;
 - (xvii) sewing operations on ties;
 - (xviii) sewing shoulder pads into dresses and/or unlined coats;
- and includes various odds and ends of sewing;
- (ac) **"pinner"** means an employee who is engaged in-
- (i) making and pinning underwear bows;
 - (ii) pinning garments;
 - (iii) pinning underwear motifs and trimmings;
- (ad) **"pleater"** means an employee who is engaged in-

G -15

- (i) guiding material with paper through an automatic pleating machine;
 - (ii) putting material between two paper looms (formers) and preparing for steambox in hand or loom-pleating process;
 - (iii) taking material out of looms in hand or loom-pleating process;
- (ae) "**press stud machine operator**" means an employee who is engaged in operating a semi-automatic press stud machine; putting hooks and bars on top of the flies of trousers and extending flaps of trousers;
- (af) "**scalloper**" means an employee who is engaged in cutting cloth from scallops;
- (ag) "**skiver**" means an employee who is engaged in operating a skiving machine which reduces the thickness of leather;
- (ah) "**sloper**" means an employee who is engaged in marking and trimming the shape of necks of garments;
- (ai) "**sorter**" means an employee who is engaged in-
- (i) sorting and bagging dye-lots prior to dyeing;
 - (ii) sorting out for various operations; but excludes sorting parts from the cut lay;
- (aj) "**spotter**" means an employee who removes spots and stains;
- (ak) "**stamper**" means an employee who stamps sizes and/or identifying work numbers on garments or parts of garments;
- (al) "**stapler**" means an employee who is engaged in stapling or pinning parts of garments together;
- (am) "**steam press operator**" means an employee who is engaged in passing garments through a steam press and receiving out at the other end;
- (an) "**swatch cutter**" means an employee who is engaged in cutting traveller's swatches;
- (ao) "**tablehand**" means an employee who is engaged in-
- (i) cleaning off any excess rubber solution;
 - (ii) painting seams of oilskins and waterproof hats;
 - (iii) smearing rubber solution on seams or edges and rolling them over with a small hand roller;
- (ap) "**ticket sewer**" means an employee who is engaged in stitching tickets on garments by machine;
- (aq) "**transferer**" means an employee who is engaged in transferring or stencilling garments, parts of garments or panels by hand or machine;
- (ar) "**turner**" means an employee who is engaged in-
- (i) machine patent turning, i.e., operating any form of automatic or semi-automatic machine which turns out or turns over the edges of points of collars, bands, cuffs, tabs, pockets, or loops, including the semi-automatic machine making collar tabs;

- (ii) turning garments by hand, trimming and turning garments or parts of garments;
- (as) underpressing men's and boys' melton and linen caps;
- (at) **"welder"** means an employee who is engaged in operating an electric fabric welding machine;
- (au) zip machine operator;

"head cutter" means a qualified cutter as defined in this part of the Agreement who is in charge of and actively supervises the cutting department of an establishment;

"hourly rate" or "hourly wage" means the weekly wage prescribed in clause 4 (1) read with clause 4 (10), divided by-

60 in the case of a watchman or caretaker;

46 in the case of a boiler attendant;

42,5 in the case of all other employees;

"incapacity" means inability of an employee to work owing to any sickness or injury, other than sickness or injury caused by the employee's own misconduct: Provided that any such inability to work caused by an accident or a scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), shall be regarded as incapacity only during any period in respect of which no disablement payment is payable in terms of that Act;

"instructor" means an employee who is responsible for training employees in any establishment or who in any manner whatsoever assists an employer in or about a factory in carrying out training programmes to improve the productivity of his employees;

"interlining cutter" in the shirt section means an employee who is employed solely in cutting linings for shirts, collars, pyjamas and other nightwear;

"labourer" means an employee who is engaged in one or more of the following duties or capacities:

- (a) Binding, wiring, or strapping boxes or bales or other containers;
- (b) cleaning and/or washing premises, plant, machinery, vehicles, tools and/or other articles;
- (c) fitting and mending machine belts, cleaning, oiling and greasing machines, moving tools, equipment and machines, changing needles, cleaning cotton and/or cloth from underneath throat plate;
- (d) general gardening work;
- (e) loading or unloading vehicles, trailers or international standard containers;

"lay maker" means an employee, other than an interlining cutter, trimmer or tie cutter, who positions patterns for a lay;

"layer up" means an employee who is engaged in laying up material, which may include slitting the ends and sides and/or who sorts parts from the cut lay;

"learner" means an employee whose period or periods of employment do not entitle him to be paid the qualified wage specified in clause (4) (1) for an employee of his class;

G -17

"leather cutter" means an employee, other than a laymaker, who is engaged in cutting parts of leather garments;

"level B compliance" refers to the status of non-compliant employers who bring themselves within the provisions of clause 37(8). For so long as such employers abide by all the conditions set out therein, no writs of execution in respect of non-compliance will be enforced against them, and they will be entitled to Level B Compliance Certificates from the Council;

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

"monthly wage" means the weekly wage multiplied by four and a third;

"motor vehicle driver" means an employee who is engaged in driving a motor vehicle, and for the purposes 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;

"normal shift worker" means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

"patent machine" means a button, buttonhole, padding or felling machine;

"paternity" means any event connected to the birth or adoption of a child parented by an eligible employee;

"pattern grader" means an employee who grades patterns to various sizes and makes ancillary patterns to a master pattern and includes an employee who is engaged in making master patterns for the pleating process and in making copies for the master pattern;

"pattern maker" means an employee who is engaged in designing and/or making master patterns;

"piece-work" means any system by which earnings are calculated upon the quantity or output of work performed;

"qualified" means that an employee has completed his period of learnership as prescribed in this part of the Agreement;

"quality controller" means an employee, other than a passer, who carries responsibility for quality control in a factory or any department of a factory, i.e., ensuring that the quality of any garment or part of any garment, whether in a finished or unfinished state, meets the standard of quality determined by the employer;

"Regional Chamber" for the purposes of this part of the Agreement, means the Cape Chamber (Western Cape Sub-Regional Chamber) of the Council;

"set leader" means an employee who is responsible for the work executed by the employees composing a set or team under his charge and who takes an active part in the operation of a set;

"set of workers" (sometimes referred to as a "set") means a team of employees numbering three or more, who are engaged in performing sectional operations in the making up of garments, usually under the direction of a leader;

"shop steward" means an employee at any establishment who has been duly elected to be a shop steward in terms of the constitution of the trade union and who has been recognised by the employer as a shop steward;

"short time" means a temporary reduction in the number of ordinary weekly hours of work in an establishment owing to slackness of work or other exigencies of trade;

"storeman" means an employee who is in general charge of stores and/or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or a warehouse and/or delivering goods from a store or warehouse to the consuming departments in an establishment or for despatch;

"supervisor" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to the care of such employee in a factory or a department of a factory;

"task-work" means the setting by an employer (or his representative) to an employee of a stated number of garments or parts of garments to be completed by such employee within a specified time;

"tie-cutter" means an employee who is engaged in marking-in and/or cutting ties by hand or machine;

"tracer" means an employee who traces master lays or traces around patterns which have already been positioned by the lay-maker;

"trade union funds", without limiting the generality of its meaning, includes trade union subscriptions and levies;

"traveller's driver" means an employee who accompanies the traveller on his journey and assists the traveller in driving and in packing, unpacking and displaying samples;

"trimmer" in the Clothing Section, means an employee who is employed in marking-in and/or cutting linings and/or interlinings;

"twilight shift" means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

"twilight shift worker" means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

"underpresser" means an employee, other than a presser, who is employed in pressing processes, including the pressing of pockets and seams of crutch linings of completed trousers, but excluding ironing processes;

"unladen mass" means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue licences in respect of motor vehicles;

"wage" means the amount of money payable to an employee in terms of clause 4 (1), read with clause 4 (12), in respect of his ordinary hours of work as specified in clause 9:

Provided that-

- (i) if an employer regularly pays an employee in respect of such ordinary hours of work, an amount higher than that specified in clause 4 (1), read with clause 4 (12), it means such higher amount;

G -19

- (ii) the first proviso shall not be construed so as to refer to, or include, such remuneration as an employee who is employed on any basis provided for in clause 7 received over and above the amount which he would have received had he not been employed on such basis;

"watchman or caretaker" means an employee who is engaged in guarding premises, buildings or other property.

In classifying an employee for the purposes of this part of the Agreement, he shall be deemed to be in that class in which he is wholly or mainly engaged.

4: WAGES

- (1) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the undermentioned classes of employees shall be as follows:

DESCRIPTION		Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
		R	R	R	R
Part A - Cutting Department					
	Head Cutter	1 276.50	1 021.00	1282.00	1025.50
	Pattern Maker:				
	(a) Qualified	1 276.50	1 021.00	1282.00	1025.50
	(b) Learner				
	First year				
	First six months of experience	768.50	615.00	772.50	618.00
	Second six months of experience	835.50	668.50	839.00	671.00
	Second year				
	First six months of experience	905.00	724.00	909.50	727.50
	Second six months of experience	975.50	780.50	978.50	783.00
	Third year				
	First four months of experience	1 052.00	841.50	1055.50	844.50
	Thereafter, the wage specified in (a), i.e.	1 276.50	1 021.00	1282.00	1025.50
	Pattern Grader				
	(a) Qualified	1 054.50	843.50	1059.00	847.00
	(b) Learner				
	First year				
	First six months of experience	724.50	579.50	727.50	582.00
	Second six months of experience	768.50	615.00	772.50	618.00
	Second year				
	First six months of experience	810.00	648.00	814.00	651.00
	Second six months of experience	855.50	684.50	859.00	687.00

G -20

DESCRIPTION		Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
		R	R	R	R
	Third year				
	First six months of experience	905.00	724.00	909.50	727.50
	Next four months of experience	954.00	763.00	957.50	766.00
	Thereafter, the wage specified in (a), i.e.	1 054.50	843.50	1059.00	847.00
	Cutter, lay-maker:				
(a)	Qualified	1 019.50	815.50	1024.50	819.50
(b)	Learner				
	First year				
	First six months of experience	664.00	531.00	666.50	533.00
	Second six months of experience	721.50	577.00	724.50	579.50
	Second year				
	First six months of experience	779.50	623.50	781.50	625.00
	Second six months of experience	840.00	672.00	844.00	675.00
	Third year				
	First six months of experience	910.50	728.50	914.50	731.50
	Next four months of experience	1 019.50	815.50	1024.50	819.50
	Interlining cutter, trimmer, leather cutter and tie cutter				
(a)	Qualified	772.00	617.50	774.00	619.00
(b)	Learner				
	First year				
	First six months of experience	607.00	485.50	608.50	487.00
	Second six months of experience	634.00	507.00	636.00	509.00
	Second year				
	First six months of experience	663.00	530.50	665.00	532.00
	Second six months of experience	690.00	552.00	692.00	553.50
	Third year				
	First four months of experience	720.00	576.00	722.00	577.50
	Thereafter, the wage specified in (a) i.e.	772.00	617.50	774.00	619.00
(c)	If advanced to learner cutter:				
	First six months from date of advancement	825.50	660.50	828.50	663.00
	Second six months from date of advancement	910.50	728.50	914.50	731.50
	Thereafter, the wage specified for a qualified cutter, i.e.	1 019.50	815.50	1024.50	819.50
	Layer-up:				
(a)	Qualified	677.00	541.50	679.00	543.00
	First year				
	First six months of experience	592.00	473.50	594.00	475.00
	Second six months of experience	607.00	485.50	608.50	487.00
	Second year				

G -21

DESCRIPTION		Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
		R	R	R	R
	First six months of experience	627.00	501.50	629.00	503.00
	Thereafter, the wage specified in (a), i.e.	677.00	541.50	679.00	543.00
(b)	If advanced to learner cutter:				
	First six months from date of advancement	677.00	541.50	679.00	543.00
	Second six months from date of advancement	779.50	623.50	781.50	625.00
	Third six months from date of advancement	840.00	672.00	844.00	675.00
	Fourth six months from date of advancement	910.50	728.50	914.50	731.50
	Thereafter, the wage specified for a qualified cutter, i.e.	1 019.50	815.50	1024.50	819.50
Clicker:					
(a)	Qualified	792.50	634.00	794.50	635.50
(b)	Learner				
	First year of experience	621.00	497.00	622.50	498.00
	Second year of experience	690.00	552.00	692.00	553.50
	Thereafter, the wage specified in (a), i.e.	792.50	634.00	794.50	635.50
Tracer:					
(a)	Qualified	750.00	600.00	752.00	601.50
(b)	Learner				
	First year				
	First six months of experience	621.00	497.00	622.50	498.00
	Second six months of experience	655.50	524.50	657.00	525.50
	Second year				
	First six months of experience	687.00	549.50	690.00	552.00
	Thereafter, the wage specified in (a), i.e.	750.00	600.00	752.00	601.50
Part B - Factory Operatives					
Clothing machine mechanic:					
(a)	Qualified	1 276.50	1 021.00	1282.00	1025.50
(b)	Learner				
	First year				
	First six months of experience	768.50	615.00	772.50	618.00
	Second six months of experience	835.50	668.50	839.00	671.00
	Second year				
	First six months of experience	905.00	724.00	909.50	727.50
	Second six months of experience	975.50	780.50	978.50	783.00
	Third year				
	First six months of experience	1 052.00	841.50	1055.50	844.50

G -22

DESCRIPTION		Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
		R	R	R	R
	Next four months of experience	1 128.00	902.50	1131.50	905.00
	Thereafter, the wage specified in (a), i.e.	1 276.50	1 021.00	1282.00	1025.50
Grade A employee:					
(a)	Qualified	835.50	668.50	839.00	671.00
(b)	Learner				
	First year				
	First six months of experience	623.50	499.00	626.50	501.00
	Second six months of experience	662.00	529.50	664.00	531.00
	Second year				
	First six months of experience	696.00	557.00	698.50	559.00
	Second six months of experience	731.00	585.00	734.00	587.00
	Third year				
	First four months of experience	772.00	617.50	774.00	619.00
	Thereafter, the wage specified in (a), i.e.	835.50	668.50	839.00	671.00
Grade B employee:					
(a)	Qualified	707.50	566.00	717.00	573.50
(b)	Learner				
	First year				
	First six months of experience	623.50	499.00	623.50	499.00
	Second six months of experience	644.00	515.00	646.00	517.00
	Second year				
	First six months of experience	663.50	531.00	668.00	534.50
	Thereafter, the wage specified in (a), i.e.	707.50	566.00	717.00	573.50
(c)	If advanced to Grade A employee:				
	First six months from date of advancement	707.50	566.00	717.00	573.50
	Second six months from date of advancement	712.50	570.00	721.50	577.00
	Third six months from date of advancement	743.50	595.00	756.00	605.00
	Thereafter, the wage specified for a qualified Grade A employee, i.e.	827.50	662.00	822.00	657.50
Grade C employee:					
(a)	Qualified	662.00	529.50	664.00	531.00
(b)	Learner				
	First year				
	First six months of experience	604.50	483.50	606.50	485.00
	Second six months of experience	620.00	496.00	621.50	497.00

G -23

DESCRIPTION		Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
		R	R	R	R
	Thereafter, the wage specified in (a), i.e.	662.00	529.50	664.00	531.00
(c)	If advanced to Grade B employee:				
	First six months from date of advancement	662.00	529.50	664.00	531.00
	Second six months from date of advancement	666.50	533.00	669.00	535.00
	Thereafter, the wage specified for a qualified Grade B employee, i.e.	724.50	579.50	727.50	582.00
Underpresser, blocker:					
(a)	Qualified	666.50	533.00	669.00	535.00
(b)	Learner				
	First year				
	First six months of experience	592.00	473.50	594.00	475.00
	Second six months of experience	607.00	485.50	608.50	487.00
	Second year				
	First six months of experience	627.00	501.50	629.00	503.00
	Second six months of experience	666.50	533.00	669.00	535.00
(c)	If advanced to learner presser:				
	First six months from date of advancement	666.50	533.00	669.00	535.00
	Second six months from date of advancement	772.00	617.50	774.00	619.00
	Thereafter, the wage specified for a qualified Grade A employee, i.e.	835.50	668.50	839.00	671.00
Part C - Clerical employees					
Clerk					
(a)	Qualified	910.50	728.50	914.50	731.50
(b)	Learner				
	First year of experience	699.50	559.50	703.00	562.50
	Second year of experience	754.50	603.50	758.00	606.50
	Third year				
	First six months of experience	811.50	649.00	816.00	653.00
	Thereafter, the wage specified in (a), i.e.	910.50	728.50	914.50	731.50
Factory Clerk					
(a)	Qualified	710.00	568.00	713.00	570.50
(b)	Learner				
	First year of experience	591.00	473.00	592.50	474.00
	Second year of experience	621.50	497.00	623.50	499.00
	Third year				
	First six months of experience	659.50	527.50	662.00	529.50

DESCRIPTION			Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
			R	R	R	R
		Thereafter, the wage specified in (a), i.e.	710.00	568.00	713.00	570.50
Part D - General						
		Boiler attendant	679.00	543.00	681.00	545.00
		Despatch packer	697.00	557.50	699.50	559.50
		General Worker	658.00	526.50	665.00	532.00
		Labourer	666.50	533.00	669.00	535.00
		Motor vehicle driver of a vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle is as follows -				
	(a)	under 2 720 kg	725.00	580.00	728.00	582.50
	(b)	2 720 kg and over	810.00	648.00	814.00	651.00
		Supervisor, quality controller and instructor	855.50	684.50	859.00	687.00
		Traveller's driver	725.00	580.00	728.00	582.50
		Watchman or caretaker, whose ordinary hours of work are -				
	(a)	less than 60 hours per week	747.00	597.50	750.50	600.50
	(b)	60 hours per week	721.00	577.00	781.50	625.00
<p>NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by R58.50 Across-the-Board.</p>						

(2) New Employees

2.1 New employees shall be paid a weekly wage of 80% of the rate in non-metro and all other areas, subject to the following provisions:

2.1.1 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a period of 3 years.

2.1.2 The provision is only applicable to compliant companies.

2.1.3(a) The new entry-level wage provision will continue in force and effect as an industry-wide provision after the 31st August 2014 if there has been an increase in employee strength of compliant employers in the industry of at least 15% as at 31st March 2014, monitored on a bi-annual basis.

G -25

- (b) The bi-annual benchmark monitoring shall be measured against the following schedule of new employment growth:

1 March 2012:	3% increase
1 September 2012:	6% increase
1 March 2013:	9% increase
1 September 2013:	12% increase
1 March 2014:	15% increase

- 2.1.4 It is only applicable to those compliant companies who were in existence and operational as at 1 June 2011.
- 2.1.5 All other provisions of the main agreement shall be applicable to new employees.
- 2.1.6 The closed shop shall be applicable to all new employees.
- 2.1.7(a) The employee strength to determine whether or not there has been an increase in employee strength will be measured by comparing the employee strength of compliant employers whose businesses are registered with the bargaining council on the *1st June 2011, as per clause 2.1.3, and to that of the employee strength of compliant employers whose businesses are registered with the bargaining council on the 31st March 2014, i.e. a period of 30 months following the implementation of this Agreement.*
- (b) In the event that the employee strength does not increase as per the provisions of this *Agreement* and more specifically, the provisions of *Clause 2.1.3* above, the provisions of the new-entry wage provision will terminate.
- (c) Upon such termination of the application of the new entry level wage provision, the wages of all employees earning the new-entry wage will be increased to the full applicable gazetted wage for all job categories from the first pay week following the 31st August 2014, unless the parties during the 2014/2015 round of annual or other negotiations agree otherwise or agree to an alternative to address any further job losses or the absence of job growth in the industry.
- 2.1.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to employ employees at the rates specified in sub-clause 2.1.3 (a) above.
- 2.1.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 2.1.10 Qualified employees shall be employed at the qualified new entry rate, subject to sub-clause 2.1.1.
- 2.1.11 Effective 1st September 2011, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.

(3) **Incentivised Wage Rates**

The 'new entry wage rates' provisions as specified in clause 4 of the 2011/2012 party-to-party substantive agreement shall be abolished and replaced with the following incentivised wage rates provisions, applicable to new employees only:

- 3.1 With effect 1 September 2013, new employees shall be paid a guaranteed wage of no less than 80% of the normal qualified gazetted wage rate applicable to current employees, subject to the following provisions:
- 3.2 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a minimum period of 3 years, unless the applicant employee agrees otherwise with his/her prospective employer.
- 3.3 The guaranteed wage rate as specified in sub-clause 3.1 above shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the qualified rate, provided the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1 September 2012, once a national framework agreement governing the incentive portion has been agreed.
- 3.4 The provisions of clause 3 of this circular is only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.
- 3.5 All other provisions of the industry's Main Agreement shall be applicable to new employees.
- 3.6 The closed shop shall be applicable to all new employees.
- 3.7 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to re-employ employees at the rates specified in sub-clause 3.1 above
- 3.8 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 3.9 Qualified employees shall be employed at the qualified rate, subject to sub-clause 3.2 above.
- 3.10 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party to party agreement, which was subsequently extended to non-parties and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus the annual increases, and subject to the companies at which they are employed meeting the compliant employment growth targets as set out in the 2011/2012 wage agreement.
- 3.11 Effective 1st September 2012, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.

G -27

- 3.12 The parties shall negotiate a national framework agreement at national bargaining council level, to give enabling effect to the plant level incentivised wage component as contemplated in sub-clause 3.3 of this agreement. This shall be finalised within a period of 4 months with effect from 1 October 2012 (excluding the annual shutdown period). Thereafter, companies who qualify for the provisions of clause 4 of the substantive agreement and who wish to implement it shall have a 2 month period to conclude plant-level incentive arrangements in terms of the provisions of the national framework agreement.
- 3.13 The deadlock breaking mechanism for the national framework agreement is either binding interest arbitration or, at the end of the prescribed period, the entire 80% dispensation falls away, unless other forms of deadlock breaking mechanisms are agreed between the parties.
- 3.14 Should the 80% dispensation fall away in consequence of the provision in sub-clause 3.13 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreement rate.
- 3.15 The deadlock breaking mechanism for operationalising the incentive component at plant level shall consist firstly of a facilitation process by a panel of experts jointly appointed by the employer and trade union parties to this agreement and if not resolved, by an advisory award by the panel, unless other forms of deadlock breaking mechanisms are agreed to between the parties.
- 3.16 The parties agree that the only outstanding issue pertaining to the national incentivised framework agreement is the deadlock breaking mechanism. The Parties agree to finalise this matter within two (2) weeks from the date of signing this agreement, failing which the provision of sub-clause 3.13 above will become effective.
- (4) **Set leaders:** In addition to the wages computed in terms of subclause (1) of this clause, any employee when called upon to perform the duties of a set leader shall receive and be paid an additional R2,60 per week whilst so employed.
- (5) **Basis of contract:** For the purposes of this clause the contract of employment of an employee, other than a casual employee and a twilight shift worker, shall be on a weekly basis, and an employee shall be paid in respect of a week not less than the full weekly wage prescribed in subclause (1), read with subclause (8) and subclause (12), for an employee of his class, whether he has in that week worked the maximum number of ordinary hours of work applicable to him in terms of clause 9, or less, and subject to the provisions of clause 30, each contract of service shall be deemed to have been continuous from the time the employee entered the employer's service until the time such service is legally terminated: Provided that the remuneration payable to a twilight shift worker shall accrue at an hourly rate.
- (6) **Incremental dates:** An employer shall pay increases due to his employees during each calendar year on the following basis:
- (a) All employees who qualify for an increase during the period 1 January to 31 March of the calendar year shall be granted such increases with effect from the pay week in which 15 February of such year falls. When an employee is not in employment during the said pay week he shall become entitled to the increase with effect from the date he is employed.
- (b) Likewise and in the same manner, all increases which become due during the periods 1 April to 30 June, 1 July to 30 September and 1 October to 31 December of each calendar year shall be granted to employees with effect from

the pay week in which 15 May, 15 August and 15 November fall, within the respective periods.

- (c) In calculating whether an employee qualifies for an increment, all periods of absence from work shall be counted, except any absence without pay for a continuous period in excess of four consecutive pay weeks and in respect whereof full particulars of the name of the employee and the period of absence have been advised to the Regional Chamber within 14 days of the employee's resuming work.
- (7) Except with the approval of the Regional Chamber, or unless otherwise provided for herein, an employee transferred from, one occupation to another for which wages are prescribed in this part of the Agreement, either with the same employer or if commencing service with another employer, shall be paid the wages prescribed in respect of the experience such an employee has had in the Industry, irrespective of the occupation in which such experience has been obtained.
- (8) **Differential rates:** An employer who requires or permits a member of one class of his employees to perform for longer than one hour in the aggregate on any day, either in addition to his own 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 wage higher than that of his own class;
- is prescribed in subclause (1) shall pay such employee in respect of that day-
- (i) in the case referred to in paragraph (a), not less than one-fifth of the higher weekly wage prescribed in subclause (1); and
- (ii) in the case referred to in paragraph (b), not less than one-fifth of the highest weekly wage prescribed in subclause (1) for the higher class:
- Provided that where the difference between classes is, in terms of subclause (1), based on experience, the provisions of this subclause shall not apply.
- (9) Subject to the provisions of clauses 5 (4) and 12, an employee, other than a casual employee and a twilight shift worker, shall be paid the full weekly wage prescribed in subclause (1), read with subclause (10), for an employee of his class, whether he has worked full time or less.
- (10) **Casual employee:** A casual employee shall be paid in respect of every day or part of a day of employment not less than one-fifth of the weekly wage prescribed for a labourer in subclause (1), read with subclause (12).
- (11) **Shift allowance:** In addition to the wage specified in sub-clause (1), read with sub-clause (10), a normal shift worker shall, in respect of his shift hours worked in any week, be paid an additional 12,5% on such wage.
- (12) **Annual bonus:** Each employee shall be paid an annual bonus on the day of his employer's annual closure in December of each year, equivalent to 2,0% of his annual basic prescribed wage (excluding overtime earnings and production bonuses) calculated from 1 January to 31 December. A pro rata share thereof shall be paid to an employee who leaves employment before 31 December.

The bonus is inclusive of and not additional to any annual bonus paid by an employer, and a shop steward may not be prejudiced in respect of annual bonus earnings for time off authorised by his employer in order to attend to union business.

- (13) Notwithstanding anything to the contrary herein, the wage of an employee who, immediately prior to the date on which this part of the Agreement comes into operation, is in receipt of a wage higher than that specified for the class of work in which he is engaged shall, with effect from the date on which this part of the Agreement comes into operation, be increased by an amount not less than the difference between the wage as agreed by the Parties as at 1 September 2013 and the wage specified for the same class of work in the agreement in force immediately prior to that date.

5: PAYMENT OF WAGES

- (1) Nothing in this part of the Agreement shall operate to reduce the wage which was being paid immediately prior to or to which any employee was entitled at the date of the commencement of this part of the Agreement whilst such employee is employed by the same employer. The provisions of this subclause shall also apply in the case of any employee whose services are terminated by such employer subsequent to the date of commencement of this part of the Agreement and who is re-engaged by such employer.

For the purposes hereof, this part of the Agreement shall include any amendment thereto.

- (2) (a) The wages due to an employee, other than a normal shift worker or a casual employee, shall be paid in cash each Friday during working hours, but not later than 17h30, at the place and time specified in the notice posted up in the establishment.

Any time which may elapse after the normal hours of work and the time at which payment is made shall be deemed to be overtime. If a pay-day falls upon a public holiday, payment shall be made during working hours on the day preceding such holiday.

In the case of a normal shift worker the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during the usual office hours of the establishment, but not later than twenty-four hours after the usual pay day.

In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.

- (b) Employees engaged on a monthly basis shall be paid not later than the last day in each calendar month, or upon the termination of employment if this should take place before the ordinary pay day of the employee.
- (c) Where the contract of employment is terminated on any working day other than the ordinary pay day in the establishment, all wages or other moneys due to the employee shall be paid immediately upon termination of employment, and where this is not done, the employee shall, in addition, be entitled to his normal wages for any period up to the time at which payment is made.
- (d) A casual employee shall be paid in cash for each day worked not later than the usual closing time of the establishment.
- (3) **Wage envelopes:** All wages shall be handed to employees in sealed envelopes which shall bear the name of the employee, his factory number, the name of the employer, the number of hours worked by the employee, his prescribed weekly wage rate, deductions made in terms of subclause (4) and clause 12 (i.e., short time), and the period in respect of which payment is made.

- (4) No deductions of any description, other than the following, shall be made from the amount due to an employee:
- (a) Except where otherwise provided in this part of the Agreement, whenever an employee is absent from work and such absence is not at the request or on the instructions of his employer, a pro rata deduction for actual time lost;
 - (b) with the written consent of the employee, deductions for a savings and/or holiday fund: Provided that the commencement or continuance of a savings and/or holiday fund is subject to the approval of the Regional Chamber, after the employer has agreed to deposit such moneys deducted from his employee's wages in a trust under the supervision of the Regional Chamber;
 - (c) levies in terms of clause 22, Health Care Fund contributions in terms of clause 26 of this part of the Agreement, and Provident Fund contributions in terms of clause 6 of the Provident Fund Collective Agreement;
 - (d) any amount that an employer is compelled by law, ordinance or legal process to make payment of on behalf of an employee;
 - (e) where scissors have been provided by an employer to his employee, a weekly installment not exceeding R2,00 may be deducted until the cost incurred by the employer has been repaid, but in the event of the employee returning the scissors to his employer he shall be entitled to a refund of the total amount he has paid;
 - (f) deductions in respect of tea (or any other beverage) in terms of clause '13 of this part of the Agreement;
 - (g) where no work is available to an employee on account of a breakdown of machinery or other cause beyond the control of the management, the employer may make a pro rata deduction for any time lost in excess of two hours;
 - (h) deductions for contributions to trade union funds;
 - (i) deductions for cash advanced against wages;
 - (j) deductions in respect of repayments on housing loans provided for in clause 8 (4) of the Provident Fund Agreement of the Regional chamber;
 - (k) where overalls have been provided by an employer to his employee at his request, a weekly installment not exceeding R2,00 may be deducted until the cost thereof has been repaid, but in the event of the employee leaving or absconding before the full cost of an overall has been paid, the outstanding amount may be deducted from his wages;
 - (l) deductions for contributions to pension funds approved by the Registrar of Pension Funds;
 - (m) deductions in respect of payments to local authorities for housing loans, rentals and rates;
 - (n) deductions from the wages of monthly-paid employees in respect of life insurance premiums;
 - (o) deductions in respect of clipcards for bus or train travel.
- (5) Employers who supply their employees with goods of any kind whatsoever, shall not deduct the amounts owing thereon from the wage of such employees. Wages shall at

G -31

all times be paid in full except as is provided for in subclause (4) hereof and clause 12, and no deduction shall be made in respect of goods that may have been accidentally spoilt during the manufacturing process.

- (6) Where work of any nature whatsoever is performed in an establishment by employees organised in sets or teams, each individual employee in the said sets or teams shall be paid his wage by the employer or his representative in the establishment where the work is performed.
- (7) No employer shall charge, nor shall he accept, any premium or monetary or other compensation 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.
- (8) Whenever work ceases or is interrupted in the whole or in part of an establishment owing to damage caused by fire, storm or flooding, an employer shall pay all employees affected thereby wages for up to a maximum of two weeks: Provided that such payment shall include any payment in respect of notice of termination of service which may be due in terms of clause 18 of this part of the Agreement: provided further that where work in a part or in the whole of the establishment is resumed within two weeks from the date on which work was so ceased or interrupted, the payment due shall be only in respect of the actual time lost by the employees affected.

The provisions of this subclause shall also apply to any employee who, at the date of such fire, storm or flood, is employed on trial in terms of clause 18 (8) of this part of the Agreement.

- (9) Subclause (8) shall not apply to a casual employee.

6: TIME RECORDS

- (1) Every employer shall provide, to the satisfaction of the Regional Chamber, a semi-automatic time recording clock or other recording system and shall establish beyond reasonable doubt the actual time each individual employee has attended at the establishment.
- (2) Every employee shall, unless prevented by sickness or other unavoidable cause, register day by day the actual periods of his attendance at the establishment.
- (3) Every employee shall register in person, in accordance with the method employed in the establishment, and no employee may register for any other employee in such establishment.
- (4) All time cards or other types of records shall, in accordance with the requirements of section 205 (1) and (2) of the Act, be kept for a period of three years subsequent to the date of the record and on request shall be available for inspection by the designated agent of the Council or Regional Chamber.

7: WAGE INCENTIVES, PIECEWORK AND TASK-WORK

- (1) Task-work is prohibited and employees who are required to produce a given number of units of production shall be placed under a piecework or incentive system as provided for in this clause.
- (2) No employer shall employ an employee on piecework or any other form of wage incentive except in accordance with the following conditions:

- (a) No employee shall be paid in any week less than the minimum wage to which he would have been entitled in terms of clause 4 of this part of the Agreement if he had been employed purely as a timeworker.
- (b) The Regional Secretary of the Regional Chamber shall, within seven days of the introduction of any piecework or other form of wage incentive, be notified of the introduction thereof.
- (c) A schedule of the piecework rates and, in the case of any other form of wage incentive, a statement clearly illustrating how bonus payments will be calculated, shall forthwith be exhibited and kept posted in a conspicuous place readily accessible to the employees and such schedule and/or statement shall be signed in situ by a designated agent of the Council or Regional Chamber.
- (d) The employees affected by any wage incentive scheme other than straight piecework shall have the right to elect a works committee of two (or such additional numbers as may be agreed to by the employer) and in the event of a works committee being appointed, full details of the actual operation of the scheme shall be made available to the committee.
- (e) Full details of the wage incentive scheme showing the operations covered, work values and allowances made in calculating work values shall be maintained by the employer and where any changes are effected, the record of the previous system shall be retained for a period of one year after such change.
- (f) No details of the wage incentive scheme may be changed to reduce the earnings of the employees affected without the consent of the works committee (if there is one), and in the event of any dispute arising, the matter shall be referred to the Regional chamber: Provided that this shall not apply to any changes effected during the trial period of three months after the coming into operation of the scheme.

Piecework rates shall not be reduced without the consent of the Regional Chamber.
- (g) No wage incentive system may be continued for a period exceeding one month after a trial period of three months without a certificate of permission having been obtained from the Regional Chamber.

8: PROPORTION OR RATIO OF EMPLOYEES

- (1) Where an employer employs four or more cutters in any establishment he shall employ one head cutter at a wage of not less than the wage prescribed in clause 4 (1).
- (2) Where an employer is a limited liability company or a close corporation or a partnership, no director or member or other officer of such company or close corporation or partnership shall be deemed to be an employee for ratio purposes.

9: ORDINARY HOURS OF WORK, MEAL INTERVALS AND REST INTERVALS

- (1) Ordinary hours of work: An employer shall not require or permit an employee to work more ordinary hours than the following:
 - (a) In the case of an employee, other than a normal shift worker or a twilight shift worker, boiler attendant, casual employee and watchman or caretaker-
 - (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Monday to Friday, inclusive;

(ii) 8½ hours on any day between 07:30 and 18:00.

(b) In the case of a normal shift worker-

(i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Sunday to Saturday, inclusive;

(ii) nine hours on any day where two shifts are employed daily and eight hours on any day where three shifts are employed daily:

Provided that an employer may make mutual arrangements with his normal shift workers to work 42½ hours on night shift, excluding meal intervals, but including rest intervals, in any week from Monday to Thursday (four-day week):

Provided further that no employer may require employees to work as normal shift workers without giving the Council at least 15 working days' notice of his intention to work shifts, and without consulting the trade union in this regard.

(c) In the case of boiler attendants, the weekly hours may be 46 and the daily hours 9¼.

(d) In the case of watchmen or caretakers, the weekly hours may be 60 and the daily hours 12 (five-day week) or 10 (six-day week).

(e) In the case of casual employees, the weekly hours may be 25½ and the daily hours 8½.

(f) In the case of a twilight shift worker, the daily hours may only be any time between 16h30 and 23h00 on any day from Monday to Friday.

(2) **Hours of work to be consecutive:** All working hours in any day shall, except for meal intervals and rest intervals as provided for in this clause, be consecutive.

(3) **Rest intervals:** An employer shall grant to each of his employees a rest interval of not less than-

(a) 15 minutes as near as practicable to the middle of each morning work period;

(b) 10 minutes as near as practicable to the middle of each afternoon work period;

Provided that this sub-clause shall not apply to a traveller's driver, a motor vehicle driver, a watchman or caretaker, or an employee engaged in delivering goods or messages outside the establishment of his employer: Provided further that where three normal shifts are employed daily or a twilight shift of longer than three hours duration is employed in an establishment, such rest intervals need not be granted to a normal or a twilight shift worker, provided he is supplied free of charge with one cup of tea as near as practicable to the middle of each normal or twilight shift, as the case may be, such tea to be taken while at his post.

(4) **Meal intervals:** An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than one hour during which interval such employee shall not be required or permitted to perform any work: Provided that-

(a) periods of work interrupted by intervals of less than one hour shall be deemed to be continuous;

- (b) if such interval be for longer than one hour, the period in excess of one hour shall be deemed to be hours of work;
 - (c) where two or three shifts are worked daily in any establishment, a normal shift worker shall be granted two meal intervals of not less than 15 minutes per shift or one meal interval of not less than 30 minutes per shift, during which intervals such employee shall not be required or permitted to perform any work;
 - (d) with regard to employees other than normal normal shift workers, an employer may conclude an arrangement with his employees to shorten such employees' meal intervals to not less than 30 minutes daily;
 - (e) this sub-clause shall not apply to a twilight shift worker.
- (5) **Savings:** The provisions of this clause shall not apply to travellers, drivers and watchmen or caretakers: Provided that in the case of a watchman or caretaker he shall not be required or permitted to work for more than six days consecutively without being granted a day off duty on full pay: Provided further that the employer may, in lieu of granting his watchman or caretaker any such day off, pay the employee concerned the wage which he would have received if he had not worked on such day, plus an amount of not less than his daily wage in respect of such day not granted. The provisions of subclauses (2), (3) and (4) shall not apply to an employee engaged on emergency work or in the overhauling and repair of machinery, which cannot be performed during the regular working hours.
- (6) **Twilight Shift**
- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:
 - (i) Only unemployed people may be recruited for working this shift.
 - (ii) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
 - (iii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
 - (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
 - (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
 - (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
 - (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.
 - (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:
 - (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or
 - (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the

G -35

conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

10: OVERTIME

(1) **Overtime:** All time worked by employees other than normal shift workers and twilight shift workers -

- (a) in excess of the ordinary hours of work specified in clause 9 (1); or
- (b) before 07:30 and after 18:00 from Monday to Friday, except in the case of boiler attendants, watchmen, caretakers, canteen employees or employees engaged in cleaning premises; shall be deemed to be overtime.
- (c) **Shift workers:** All time worked by normal shift workers in excess of the ordinary daily or weekly hours of work specified in clause 9 (1) (b) shall be deemed to be overtime.
- (d) **Aggregation of Overtime:** For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 9(1) of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
- (ii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
- (iii) time not worked as a result of the employer having declared short time;
- (iv) time not worked as a result of the employee being on authorised shop steward stewards time off; and
- (v) time not worked as a result of any authorised absenteeism.

(2) **Limitation of overtime:**

- (a) **Weekly and daily limits:** No employer shall require or permit an employee to work overtime for more than-
 - (i) 10 hours in any week; or
 - (ii) three hours on any day.
- (b) **Notice of working overtime to be given to employees:** No overtime in excess of one hour in any day may be required of or permitted an employee unless the employer-
 - (i) gave notice thereof to such employee the previous day; or
 - (ii) provides such employee with an adequate meal before he commences overtime; or

- (iii) pays such employee an allowance of R5,00 to enable the employee to obtain a meal before the overtime is due to commence.
 - (c) Overtime shall be voluntary.
 - (d) Before overtime is commenced on any day (Monday to Friday), the employer shall grant his employees a 10-minute paid meal interval (regarded as part of the overtime hours) or an unpaid meal interval of 30 minutes' duration, depending on the wishes of the majority of the employees concerned.
 - (e) An employee shall not be required to work overtime without his consent and an employee shall not be dismissed by reason of his refusal to work overtime.
- (3) An employee shall be deemed to be working in the employ of an employer, in addition to any period during which he is actually working-
- (a) during any period during which, in accordance with the requirements of his employer, he is present upon or in any premises in which the Industry is being carried on;
 - (b) during any period during which he is present upon or in any such premises; and
 - (c) during any period during which he is in charge of any vehicle used in the Industry, whether or not it is being driven:
- Provided that if it is proved that during any part of any such period as referred to in paragraph (b) or (c) any such employee did not actually work in his employment, the presumption established by this subclause shall not apply in respect of that employee in relation to that period.
- (4) Overtime shall accrue daily and shall be reckoned as time worked outside of the ordinary hours of work specified in clause 9. All overtime of a lesser period than 15 minutes shall be paid for as a quarter of an hour overtime.
 - (5) **Day of rest:** An employer shall grant to each of his shift workers one full day of rest in any week: Provided that if an employer requires or permits such an employee to work on his day of rest, the hours so worked shall be deemed not to be part of the ordinary hours of work specified in clause 9 (1) (b).
 - (6) Overtime shall apply to all employees in an establishment, except travellers' drivers.
 - (7) Under no circumstances shall an employee be refused the opportunity to work overtime on the grounds of having been absent.

11: PAYMENT FOR OVERTIME AND WORK ON SATURDAYS, SUNDAYS AND PUBLIC HOLIDAYS

- (1) **Overtime:** An employer shall pay his employee, other than a twilight shift worker, in respect of all overtime worked by him, not less than:
 - (a) in the case of an employee other than a boiler attendant, watchman or caretaker and casual employee, one and a half times his wage divided by 42½ for each hour or part of an hour so worked;
 - (b) in the case of a boiler attendant, one and a half times his wage, divided by 46, for each hour or part of an hour so worked;
 - (c) in the case of a watchman or caretaker, one and a half times his wage, divided by 60, for each hour or part of an hour so worked;

G -37

- (d) in the case of a casual employee, one and a half times his daily wage, divided by $8\frac{1}{2}$, for each hour or part of an hour so worked.
- (2) **Saturday work:**
- (a) No work shall be performed on any Saturday without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.
- (b) Subject to paragraph (c), any time worked on a Saturday shall be deemed to be overtime and be paid for as follows:
- (i) All work performed in excess of $4\frac{1}{4}$ hours or after 12:00, at a rate of double an employee's hourly wage for every hour or part of an hour so worked;
- (ii) all other work in accordance with subclause (1).
- (c) Where an employee is required or permitted to work on a Saturday, his employer shall pay the employee concerned a travelling allowance of not less than R1,75.
- (d) The provisions of this subclause shall not apply to normal shift workers.
- (e) A twilight shift worker may not be required to work on a Saturday.
- (f) A twilight shift worker may not be required to work on a Sunday.
- (3) **Sunday work:** No work shall be performed on a Sunday without the permission of the Regional Chamber, and whenever an employee, other than a normal shift worker, is required or permitted to work on a Sunday, his employer shall either-
- (a) pay the employee-
- (i) if he so works for a period not exceeding four hours, not less than the ordinary wage payable in respect of the period ordinarily worked by him on a weekday; or
- (ii) if he so works for a period exceeding four hours, wages, at a rate of not less than double his ordinary rate of pay, in respect of the total period worked on such Sunday, or the wage which is not less than double the ordinary wage payable in respect of the period ordinarily worked by him on a weekday, whichever is the greater; or
- (b) pay the employee not less than one and a half times his ordinary hourly wage in respect of each hour worked on such Sunday and grant him within seven days of such Sunday, one work day, i.e., a day other than a Saturday or Sunday, as a holiday, and pay him in respect thereof not less than eight and a half hours' remuneration: Provided that for the purposes of this subclause, a piece-worker shall be paid not less than the equivalent amount to which he would have been entitled had he been employed as a time-worker.
- (4) **Public holidays:**
- (a) Subject to the provisions in (b) and (c) below, an employee other than a casual employee, shall be entitled to leave on full pay in respect of the following public holidays, and where he is required or permitted to work on such holiday he shall be paid in addition to his normal wage in respect of such holiday wages at straight time in respect of the hours so worked:

New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill.

- (b) If the public holiday falls during the period of annual leave referred to in clause 15, his employer shall pay to him in respect of that public holiday an amount not less than one fifth of his ordinary weekly wage.
 - (c) Notwithstanding the provisions of this subclause, an employee who absents himself from work on any ordinary working day immediately preceding and/or immediately following any public holiday shall not be paid for such public holiday unless such absence is on account of medically certificated sickness.
- (5) Remuneration payable in terms of any of the provisions of this clause shall be paid to the employee concerned not later than the payday next succeeding the period in respect of which such remuneration becomes payable.
- (6) **Easter weekend:** No work shall be performed after 13:00 on the day immediately preceding Good Friday and employees shall be granted the afternoon off as a paid half-holiday.

The employee shall receive for such afternoon full pay in respect of the hours normally worked on Thursday afternoons. Where work is performed on such paid half-holiday, the employee shall, in addition to payment for such half-holiday, receive payment for time worked after 13:00 at overtime rates.

No employer shall require or permit his employees to work in time at ordinary rates of pay or at overtime rates in substitution for the morning work period of the day immediately preceding Good Friday.

This subclause shall not apply to a casual employee.

- (7) The provisions of subclause (3) shall, mutatis mutandis, apply to a normal shift worker who works on his day of rest.
- (8) Overtime shall apply to all employees in an establishment, except travellers' drivers.

12: SHORT TIME

- (1) An employer shall, prior to the day on and from which he intends to work short time, notify all employees concerned by posting up a notice, or notices, in a prominent position well known and easily accessible to employees in any section or department of the establishment concerned.
- (2) Any employee who has not been given notice in terms of subclause (1) shall, on attending at the establishment, be entitled to be employed for a full working day, or be paid full wages in lieu thereof.
- (3) An employee who on any day attends at the establishment on the instructions of the employer or his representative shall be entitled to be employed for at least four hours on such day or to receive four hours' pay at his ordinary rate of pay in terms of clause 4 (1), read with clause 4 (10).
- (4) Consultation with the trade union shall take place prior to the introduction of short time.

13: PROVISION OF TEA AND OTHER BEVERAGES

- (1) Where tea (or any other beverage) is provided by the employer, a deduction of not more than one cent per cup may be made from the wages of the employees: Provided that the majority of employees in any establishment have agreed to accept tea (or any other beverage).

Reference to "tea" in this subclause shall include the provision of milk and sugar for mixing with such tea (or any other beverage).

- (2) Where tea (or any other beverage) is not provided, the employer shall, at his own expense, provide and have immediately available to his employees at the commencement of each rest interval, and also at lunch time, a sufficient supply of boiling water and the necessary utensils for the making of tea.

14: CLOSED SHOP

- (1) No employer who is a member of an employers' organisation (which is a party to the Council), shall continue to employ an employee -
- (a) who, while being eligible for membership of the union, is not a member of the union as at the date of coming into operation of part of the Agreement; or
 - (b) who does not become a member of the trade union within a period of 90 days from such date.
 - (c) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the union or employers' organisation or who have been refused membership of or expelled from the union or employers' organisation.
- (2) Every employer shall forward all deductions made from the remuneration of employees in respect of union membership fees to the Secretary of the Regional Chamber within fourteen days of month-end in which the deductions fall due. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers by not later than the end of the month in which the fees were received.
- (3) For this part of the Agreement no union membership subscriptions may be -
- (a) paid to a political party as an affiliation fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.
- (4) Provided that the provisions of this clause will not be applicable to:
- (a) clerks; or
 - (b) any employee to whom, in the opinion of the Regional Chamber, membership of the trade union has been refused without good and sufficient cause and the applicant has applied to the Council or Regional Chamber within 30 days of such refusal for exemption from the operation of this sub-clause; or

- (c) an immigrant during the first five years after the date of his/her entry into the Republic of South Africa, provided that if any immigrant has at any time after the first 90 days of commencement of his/her employment in the Industry refused any invitation from the trade union to become a member of it, the provisions of this clause shall immediately come into operation; or
 - (d) a casual employee.
- (5) Provided further that the provisions of section 26(3)(c) of the Act shall be observed by the parties to the Council and to whom this clause is applicable.

15: ANNUAL LEAVE AND PAID PUBLIC HOLIDAYS

- (1) **Annual leave:** Subject to the provisions of subclause (7), every employee shall, between 15 December of each year and 14 January of the following year, be granted at least three consecutive weeks' and one working day's annual leave and shall, in respect of such leave, be paid as follows:

- (a) In the case of an employee who, on the latest day on which he can commence leave, has completed at least one year's continuous employment with his employer-
 - (i) 15 ordinary working days at full wage;
 - (ii) Christmas Day, Day of Goodwill and New Year's Day as paid public holidays in accordance with clause 11 (4) of this part of the Agreement;
 - (iii) when the Day of Reconciliation falls within the period of annual leave, it shall, in accordance with clause 11 (4) of this part of the Agreement, also be observed as a paid public holiday, thus extending the annual leave period by one day.

no employee referred to in this subclause shall be paid less than three weeks' wages as annual leave pay.

- (b) In the case of an employee who, on the date of closing of the establishment for the specified annual leave period, has not completed one year's continuous employment with his employer and whose employment has not been terminated-
 - (i) for each completed month of employment in that year, an amount equal to one day's pay; plus
 - (ii) for any of the following public holidays falling within the period during which the establishment is closed for the annual holiday period: Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's day, the amount set out in clause 11 (4) in respect of each such holiday:

Provided that upon termination of employment an employee shall receive payment in lieu of leave calculated as follows:

One day's pay in respect of each completed month of employment calculated from 15 December of the previous year or from the date of engagement, whichever is the shorter period:

Provided further than an employer shall not set off against such days of paid leave any days of paid leave granted such employee in excess of the number of days' paid leave he was required to pay the employee for in terms of this subclause.

G -41

- (2) **Paid public holidays**
- (a) In addition to the paid public holidays normally falling within the period of annual leave, i.e., Christmas Day, Day of Goodwill and New Year's Day, each employee shall be entitled to and be granted leave on full pay on Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day and Day of Reconciliation subject to the provisions of clause 11 (4).
- (b) Where an employee's employment terminates immediately before any of the paid public holidays referred to in subclause (2) (a), he shall be entitled to payment for such public holidays, provided they fall within an extended period calculated as follows:
- One working day in respect of each completed month of employment (calculated from the day on which the employee last became entitled to leave or from date of engagement, whichever is the shorter period) shall be added to the date on which the employee's employment terminates, and if any paid public holiday falls within such added period it shall be paid for: Provided that-
- (i) where the employment of an employee is terminated by his employer at any time during December of any year for reasons other than dismissal without notice for any good cause recognised by law as sufficient, as referred to in clause 18 (1) (a), such employee shall be paid in accordance with the rate determined in clause 11 (4) in respect of each of the public holidays referred to in subclause (1) (a) which fall after the date of termination of employment;
- (ii) where an employee gives notice to his employer of his intention to terminate employment at any time during December of any year, such employee shall not be entitled to payment in respect of the paid public holidays referred to in subclause (1) (a) unless such paid public holidays fall within an extended period calculated in the manner set out herein.
- (c) Whenever an employee works on New year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day or Day of Goodwill, his employer shall pay him not less than his ordinary hourly wage in respect of the total period worked on such day, or an amount equal to at least the wage payable to the employee in respect of the time (excluding overtime) ordinarily worked by the employee on that day of the week, whichever amount is the greater, in addition to the remuneration to which he would have been entitled had he not so worked.
- (d) In the event of any of the paid public holidays referred to in subclause (1) (a) (ii) and paragraph (a) hereof falling on Saturday, an employer shall pay his employee who does not work on such day five and a half hours' wage in addition to the remuneration which is due to him for time worked from the Monday to the Friday immediately preceding such Saturday.
- (e) Whenever an employee works on a paid public holiday falling upon a Saturday, payment for any such day shall be in terms of paragraph (e) hereof, plus, in addition, one and a half times his hourly rate of pay for each hour worked on such Saturday.
- (3) **Payment for leave:** The employer shall pay his employee to whom leave is granted in terms of subclause (1), his pay in respect of leave not later than the last working day before the commencement of the said period, and any amount paid to an employee in terms of subclause (1) or (2) shall be calculated at the rate of pay which the employee was receiving immediately prior to the date upon which the leave became due or his employment terminated, as the case may be, and whenever an employee is paid on a

basis other than in accordance with the time actually worked by him, his ordinary rate of pay shall, for the purposes of this clause, be calculated as though he were paid by the hour and shall be ascertained at any date by dividing his total wage during the three months immediately preceding that date, or during the total period of his employment by the employer concerned, whichever is the shorter, by the number of hours worked during the period in respect of which such wage was paid.

- (4) For the purposes of this clause, employment shall be deemed to commence from-
- (a) the date on which the employee enters the employer's service; or
 - (b) the date on which an employee who has, in accordance with the previous Agreement, been granted leave of absence on full pay, becomes entitled to such leave in terms of such Agreement, whichever may be the later.
- (5) Short time shall not be deducted by an employer when computing the period of employment qualifying for annual leave in terms of subclause (1).
- (6) Where an employee has absented himself from work for any reason, other than that referred to in subclause (9), such period of absence shall not be considered employment in terms of subclause (1).
- (7) **Annual leave at periods other than the specified leave period:** An employer may make mutual arrangements with his-
- (a) clerks, factory shop assistants, maintenance staff and watchmen or caretakers to take their annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than three consecutive weeks' leave to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates, and for the purposes hereof-

"maintenance staff" means employees who are engaged in making repairs or adjustments to machinery or equipment, including the installation of such machinery or equipment, and who may effect cleaning, repairs or renovations to buildings, fixtures and fittings;
 - (b) employees engaged in making samples, to take not more than 10 days' annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than two consecutive weeks' leave, or such lesser period of leave as might be due to the employees concerned, to be granted not later than within that period up to and including Good Friday of the Year immediately succeeding the year of employment to which it relates: Provided that in the case of employees making samples, an employer shall be permitted to work 10 employees, or a minimum of 5 per cent of his labour force, whichever is the greater;
 - (c) employees, by agreement, to allow for two consecutive weeks' leave, inclusive of public holidays, to be taken in the period December to January each year, with the balance to be taken before the end of June of the following year: Provided that the terms of any such agreement reached by an employer with his employees shall be referred to the Regional Chamber for record purposes.
- (8) **Leave and notice not to be concurrent:**
- (a) Notice of termination of a contract of employment given by an employer shall-
 - (i) not be given during any period of leave to which the employee is entitled in terms of this part of the Agreement; and

G -43

- (ii) not run concurrently with any period of leave to which the employee is entitled in terms of this part of the Agreement.
 - (b) Nothing in this clause shall affect the right-
 - (i) of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Act, or any other law; and
 - (ii) of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.
 - (c) **Payment instead of notice:** Instead of giving an employee notice, an employer may pay the employee the remuneration the employee would have received, calculated in accordance with this part of the Agreement, if the employee had worked during the notice period.
- (9) Any period during which an employee-
- (a) is on leave in terms of subclause (1); or
 - (b) is absent on military service, not exceeding four months, undergone in that year; or
 - (c) is absent from work on the instructions or at the request of the employer; or
 - (d) is absent from work owing to illness or by reason of the fact that no female shall work in an establishment and no employer shall require or permit any female to work in his establishment during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after birth (if the child is stillborn or dies before the expiration of eight weeks after birth,
- shall be deemed to be employment for the purposes of subclauses (1) and (2):
Provided that-
- (i) the provisions of paragraph (d) shall not apply in respect of any period of absence owing to illness of more than three consecutive days, if the employee, not being an employee referred to in proviso (ii) fails, after a request for such certificate by the employer, to submit to the employer a certificate by a medical practitioner that he was prevented by illness from doing his work, or in respect of that part of any total period of absence during any 12 months of employment which is in excess of 30 days;
 - (ii) an employee whose employer is required in terms of any Act of Parliament to provide for the care and treatment of such employee when sick or injured, shall not be required to submit a certificate by a medical practitioner in respect of any period of absence referred to in proviso (i).
- (10) **Advance notice of annual leave period:** At least one calendar month's notice of the actual date of the end of the year leave period shall be given by the employer by exhibition of an appropriate notice in the factory in a conspicuous place readily accessible to his employees.
- (11) **Extension of annual leave period:** An employer shall not be entitled to extend the period of annual leave referred to in subclause (1) without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.
- (12) This clause shall not apply to a casual employee.

16: ENGAGEMENTS, TERMINATIONS, ABSENCES FROM WORK AND TRANSFERS IN OCCUPATION**(1) Service record cards to be produced on engagement**

- (a) Subject to the provisions of subclause (7), an employer shall, before engaging an applicant for work, require an applicant to produce a service record card issued by the Regional Chamber in the form and manner specified by the Regional Chamber.

In addition to issuing a service record card the Regional chamber shall issue a certificate of service reflecting the employee's employment history.

- (b) The employer shall forthwith on engaging the employee enter in the space provided for "subsequent experience" the name of his factory, the date of engagement, occupation and wage on engagement and shall retain the card in safekeeping so that it can in due course be dealt with in terms of subclause (2) upon termination of service of the employee.
- (c) No employer shall engage any employee who is, in terms of this part of the Agreement, entitled to possess a service record card unless such employee has produced to the employer such service record card issued by the Regional Chamber.
- (d) No employer shall engage any employee who is, in terms of this part of the Agreement, entitled to possess a Health Care Fund card unless such employee has produced to the employer such membership card issued by the Clothing Industry Health Care Fund in proof of membership of that Fund by such employee.
- (e) The employer shall forthwith on engagement of such employee enter in the space provided on such card the name of the factory and the date of engagement, and shall immediately thereafter hand the card back to the employee.
- (f) On termination of such employee's services the employee shall on the day such termination takes place produce to the employer the said membership card issued by the Health Care Fund and the employer shall in the space provided enter the date of termination and shall initial such date in the space provided.
- (g) If the service record card indicates that the employee is re-entering the Industry after confinement, the employer shall not permit the employee to commence work until a post-natal examination certificate has been produced in terms of subclause (7).

- (2) **Service record card to be returned to employee on termination of service or retained if on maternity leave:** On termination of service of an employee, the employer shall complete the remaining details on the employee's service record card, i.e., date of leaving, wage at date of leaving and length of employment. The completed card shall thereafter be initialled and handed to the employee on termination of service.

If the employee is ceasing employment owing to confinement, this shall be endorsed on the card by the words "Owing to confinement" being written on the line on which the "Date of leaving" is recorded.

If the employee is proceeding on maternity leave, the words "Maternity leave" and the date from which the employee proceeds on maternity leave must be written on the card on the line on which the "Date of leaving" is recorded and the card retained by the employer.

G -45

(3) **Procedure when employee does not produce a service record card:**

The employer shall forthwith on engagement cause an application in the form and manner specified by the Regional Chamber, including a Provident Fund nomination of beneficiary form, to be completed by the prospective employee and shall attach same to the weekly return of engagements referred to in subclause (4).

(4) **Weekly returns of engagements, terminations, absences from work and transfers in occupation:** Not later than Friday of each week the employer shall complete and transmit to the Regional chamber a record, in the form and manner specified by the Regional Chamber, of all engagements, terminations, the first or last dates of absences from work for four or more consecutive pay weeks and transfers in occupation of employees in respect of that week: Provided that where in any week no changes have been effected, a "Nil" return shall be submitted.

(5) **Dependants to be registered:** Every employer shall, when the Minister declares this part of the Agreement binding and thereafter at the engagement of each employee, determine if an employee has dependants and ensure that such dependants are registered with the Health Care Fund, and every employer shall, if an employee's dependants have not previously been registered with the Health Care Fund, inform the Regional Chamber of the dependants of each of his employees within five days of the end of each calendar month in the form and manner specified by the Regional Chamber. In the event of no dependants having to be registered in respect of the calendar month, a 'Nil' return shall be submitted.

An employee who can prove to the satisfaction of his employer that his dependants are covered by a registered medical aid scheme need not register his dependants with the Health Care Fund. Proof of such medical aid scheme membership must be available for inspection purposes.

An employer shall forward the service record card of each employee with dependants to the Regional Chamber to enable the Regional Chamber to record the fact that an employee has dependants on such card unless the employee's card already reflects such information.

(6) **Notice of termination of service to be given in writing by employer or employee**

(a) An employer shall, when giving notice of his intention to terminate an employee's employment, give his employee written notice in the form and manner specified by the Regional Chamber.

(b) An employee shall, when giving notice of his intention to terminate his employment, give his employer written notice in the form and manner specified by the Regional Chamber.

(7) **Procedure where employee proceeds on maternity leave or leaves employment owing to confinement and on re-employment thereafter**

(a) Where an employee resigns when proceeding on maternity leave, this fact shall be recorded on her service record card as provided for in subclause (2) above.

(b) Where an employee leaves work owing to confinement, the employer shall record the date of ceasing work owing to confinement.

(c) Not later than on the date of such termination or ceasing of work or commencement of maternity leave, as the case may be, the employer shall provide the employee with a blank "post-natal examination certificate", and neither the same employer nor any new employer shall permit the employee to recommence employment or to start fresh employment unless the employee

produces a properly completed post-natal examination certificate of her fitness for employment.

- (d) Where such certificate shows that the employee requires further treatment, the Secretary of the Health Care Fund shall be notified thereof and the certificate forwarded to him by registered post.
 - (e) Supplies of the blank post-natal examination certificates may be obtained from the Secretary of the Fund.
- (8) **Procedure where an employee withdraws notice:** An employee may withdraw notice of his intention to terminate his contract of employment only within two (2) working days of having tendered such notice and the employer shall require the employee concerned to acknowledge and confirm such withdrawal in the form and manner specified by the Regional Chamber.
- (9) **Duplicate service record cards:** Duplicate service record cards may be issued by the Council upon the payment of an amount determined by the Council from time to time.
- (10) This clause shall not apply to a casual employee.

17: RECORD CARDS AND AGREEMENT

- (1) **Record cards:** Every employer shall maintain a record card in respect of each of his employee other than casual employees showing the following particulars:
- (a) Factory number of employee;
 - (b) name;
 - (c) sex;
 - (d) address;
 - (e) age;
 - (f) occupation;
 - (g) starting date;
 - (h) previous experience;
 - (i) number of service record card;
 - (j) commencing wage;
 - (k) increments and dates thereof;
 - (l) transfers in occupation and dates thereof.
- (2) **Exhibition of Agreement:** Every employer shall affix and keep affixed in his establishment in a conspicuous place readily accessible to his employees, in the form prescribed in the regulations under the Act, a legible copy of this part of the Agreement in at least two official languages: Provided that every employer on whom the collective agreement, arbitration award, or determination is binding shall-
- (a) keep a copy of that collective agreement, arbitration award or determination available in the workplace at all times;

G -47

- (b) make that copy available for inspection by any employee; and
 - (c) give a copy of that collective agreement, arbitration award or determination-
 - (i) to an employee who has paid the prescribed fee; and
 - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.
- (3) **Administration of Agreement:** The Regional Chamber shall be the body responsible for the administration of this part of the Agreement, and may issue expressions of opinion not inconsistent with the provisions thereof for the guidance of employers and their employees.

18: TERMINATION OF EMPLOYMENT

- (1) **Period of notice:** Subject to-
- (a) the right of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law as sufficient;
 - (b) the provisions of any written agreement between the employer and his employees which provides for a period of notice of equal duration on both sides and for longer than one week or one month, as the case may be;
 - (c) the provisions of subclause (8);
- an employer and his employee shall, in the case of a weekly paid employee, give not less than one week's notice and in the case of a monthly-paid employee, not less than one month's notice, of his intention to terminate a contract of employment.
- (2) **Payment or forfeiture in lieu of notice:** In the event of an employer or an employee failing to give notice as provided for in subclause (1), an employer shall pay the employee or the employee shall pay and/or forfeit to the employer -
- (a) in the case of a weekly-paid employee, one week's wages;
 - (b) in the case of a monthly-paid employee, one month's wages;

calculated at the rate of pay which such employee was receiving immediately before the date of such termination.

In the above regard absence from work without prior permission for a period of six consecutive days shall constitute a termination of the contract of employment unless, within six days, the employee has furnished to his employer a medical certificate certifying his inability to perform his/her usual work, in which case the employer shall, within three days of receipt of such certificate, advise the employee that it will keep his/her employment open until the employee is able to work or tender to such employee written notice of termination of service. Any employer who fails to keep the employee's employment open or to tender notice within such three days shall be required to pay the employee in lieu of such notice: Provided that where an employee has submitted a medical certificate to his employer and subsequently returns to resume service and his employer elects to summarily terminate his employment, his date of termination shall be the date of summary termination and not the date on which he last worked.

For the purposes of this subclause, where an employee attends work on a Friday, the period of absence from work shall commence from the next succeeding Monday, i.e.,

the intervening Saturday and Sunday shall be disregarded in calculating the six consecutive calendar days' period of absence.

Nothing contained in this subclause shall in any way limit the rights and protection afforded to employees in terms of Chapter VIII of the Act.

- (3) Notwithstanding anything to the contrary in this part of the Agreement, should any money owing by an employer to an employee by way of wages be insufficient to meet the full amount of forfeiture referred to in subclause (2), the employer shall be entitled to retain such amount from other benefits (if any) which were in the process of accrual to such employee at the time of termination of his contract of employment.

For the purposes of this subclause, any payment which may be due to an employee in terms of clause 15 (1) (2) and (3) of this part of the Agreement shall also be regarded as a benefit in the process of accrual.

- (4) When an agreement is entered into in terms of subclause (1), the payment or forfeiture in lieu of notice shall be proportionate to the period of notice agreed upon.
- (5) **Date of coming into operation of notice to terminate employment:**
- (a) **Weekly-paid employees:** Notice shall be given on any working day and shall operate from the following day.
- (b) **Monthly-paid employees:** Notice shall be given at any time prior to the usual closing time of the establishment on the last working day of the calendar month and shall operate from the first day of the succeeding month.
- (6) For the purposes of this clause, a week's notice shall mean a working week of not more than the number of hours ordinarily worked by the employee, or a full week's pay in lieu thereof, and the same principle shall apply to the period of notice specified or mutually agreed upon in terms of subclause (4).
- (7) Where short time is worked in an establishment, notice to terminate employment shall be in terms of (a) and (b) hereof.
- (a) An employee may terminate his contract of employment by giving his employer notice equivalent to the number of days worked in the week preceding the notice week; and
- (b) an employer working short time shall give like notice to an employee to terminate his contract of employment.
- (8) **Trial periods:**
- (a) **Weekly employees:** The provisions of this clause shall not apply during the first four weeks of employment. Such four weeks shall be deemed to be a period of trial during which the employment may be terminated by the employer or the employee on 24 hours' notice.
- (b) **Monthly employees:** The provisions of this clause shall not apply during the first six weeks of employment. Such six weeks shall be deemed to be a period of trial during which the employment may be terminated by the employer or the employee on 24 hours' notice.
- (9) This clause shall not apply to a casual employee.

19: EXEMPTIONS

- A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement**
- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
 - (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
 - (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
 - (a) The period for which the exemption is sought;
 - (b) the number of employees affected and how many of such employees are members of a registered trade union;
 - (c) the clauses and subclauses of this part of the Agreement from which the exemption is sought;
 - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
 - (e) the demonstrable commercial need of the applicant for the exemption sought.
 - (4)
 - (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
 - (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgment of the application with the General Secretary, failing which the application shall be deemed to have been refused.
 - (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
 - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.

- (e) Subject to the time period for considering the application referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
 - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
 - (g) If the application has been granted or partially granted, the Exemptions Committee 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 exemption(s) will be valid'
 - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
 - (iv) the full name of the exempt employer or employee(s).
 - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
 - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such a fee shall be consistent with-
- (i) the cost incurred for the hearing of the appeal;
 - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
- (c) The Exemptions Board shall, in addition, have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.

G -51

- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
 - (c) The provisions of subclause (4) above shall, read with the changes required by the context, apply equally to the appeal process.
 - (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
- (a) There is a demonstrable commercial need for the exemption.
 - (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
 - (c) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted, result in a conflict with the primary objectives of the Act.
 - (d) The exemption will not undermine collective bargaining and labour peace in the industry.
 - (e) There has been compliance with subclause (3) above.
 - (f) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.
 - (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
 - (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability.
 - (d) The terms of the exemption sought, including the period thereof.
 - (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
 - (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
 - (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or

Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.

- (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
 - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
 - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
 - (k) What hardship may eventuate to employees in the event of the exemption being granted.
 - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
 - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement, except in the case of Embroidery Employers.

20: SEATING ACCOMMODATION

Seats with suitable back rests, approved by the Regional Chamber, shall be provided for all female employees.

21: TOOLS AND MATERIALS

The employer shall, free of charge, supply to the employees all tools (other than scissors), materials and requisites for the manufacture of clothing.

22: EXPENSES OF THE COUNCIL AND REGIONAL CHAMBER

- (1) The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.
- (2) (a) For the purpose of meeting the expenses of the Council and Regional Chamber, every employer shall deduct from the earnings of each of his employees for whom minimum wages are prescribed in clause 4 of this part of the Agreement, an amount equal to 0.30% of each employee's wages per week,

G -53

calculated at the qualified machinist rate of pay, payable by means of a deduction from the employee's wages maximum of R2,05 per week.

- (b) To the amount so deducted, the employer shall add an amount equal to 0.40% of each employee's wages per week, calculated at the qualified machinist's rate of pay, payable by the employer maximum of R3,31 per week and forward, month by month, and not later than the 14th day of each month, the total sum to the Regional Secretary of the Regional Chamber.
- (3) (a) Every employer shall make a return to the Regional Chamber of the number of employees employed by him for each week of each calendar month in the form and manner specified and supplied by the Regional Chamber.
- (b) Should any amount due in terms of this clause not be received by the Regional Chamber 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 Regional Chamber 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 Regional Chamber: Provided that the Regional Chamber 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 or Regional Chamber 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 pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.
- (4) This clause shall not apply to a casual employee.

23: TRADE UNION REPRESENTATIVES ON THE REGIONAL CHAMBER

Every employer shall give to any of his employees who are trade union representatives on the Council every reasonable facility to attend to their duties in connection with the work of the Council or Regional Chamber: Provided that in establishments employing 5 or fewer employees, the trade union shall give the employer 5 days' written notice of its request for time off for its representative in terms of this clause.

24: POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE OF AND IN TERMS OF THIS PART OF THE AGREEMENT

- (1) One or more persons shall be appointed by the Council or Regional Chamber to be agents to assist in enforcing the terms of the Council's or Regional Chamber's Collective Agreements.
- (2) The Council may, in terms of section 33 of the Act, request the Minister of Labour to appoint any person to be a designated agent of the Council or Regional Chamber.
- (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 part of the Agreement in terms of clause 36 or the Disputes Procedure in terms of clause 37 of this part of the 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 authorization-
 - (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 referred to in subclause (4) shall be signed by a designated agent and shall-
- (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 application by the agent and/or any appointed persons 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 General Secretary of the Council or Regional Secretary of the Regional Chamber.

G -55

- (7) The owner or occupier of any premises that an agent and/or any other appointed person is authorised to enter and inspect, and every person employed by that owner or occupier, shall provide any facilities that an agent or such person requires to enter those premises and to carry out the inspection or seizure.
- (8) The agent and/or appointed person shall 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 agent and/or appointed person shall pay the witness fee specified from time to time in terms of section-208 of the Act to each person who appears before him in response to a subpoena issued, where such fee has been specified by the Minister of Labour or, in the absence of a fee being specified by the Minister, as may be determined by the Council from time to time.
- (11) A person is in 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 agent and/or appointed person;
 - (c) by refusing to take the oath or to make an affirmation as a witness when an agent and/or appointed person so requires;
 - (d) by refusing to answer any question fully and to the best of that person's knowledge and belief subject to subclause (9);
 - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to an agent and/or appointed person;
 - (f) if the person wilfully hinders an agent and/or appointed person in performing any function conferred by or in terms of this part of the Agreement;
 - (g) if the person insults, disparages or belittles an agent and/or appointed person, 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 agent and/or appointed person 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 or Regional Chamber refer any contempt to the Labour Court for an appropriate order.

25: OUTWORK AND DISCLOSURE OF EMPLOYERS' PATTERNS, ETC.

- (1) Every employer giving out work on contract shall at all times keep a record showing-
- (a) the name and address of the person to whom the work has been given out;

- (b) a description of the type and quantity of work given out; and
- (c) the dates upon which the work was given out and the dates upon which it was received back.

For the purposes of this subclause, "giving out work" shall include the issue of materials for the purpose of having such materials made up into garments or parts of garments.

- (2) Every employer shall retain such record for a period of three years subsequent to the occurrence of that event and shall, on demand by a designated agent of the Council or Regional Chamber made at any time during the said period of three years, produce the said record for inspection.
- (3) Every employer shall within 14 days of the end of each quarter (i.e., for the periods ending 31 March, 30 June, 30 September and 31 December) forward a return of outwork to the Regional Chamber in the form and manner specified by the Regional Chamber.
- (4) No employee in the employ of an employer shall disclose to any other employer or person any cutting patterns or templates used by his employer.
- (5) No employer shall induce any employee of another employer to disclose any cutting patterns or templates used by such employee's employer.

26: CLOTHING INDUSTRY HEALTH CARE FUND

- (1) The Fund established under Government Notice No. 43 of 9 January 1948, and known as the "Clothing Industry Health Care Fund" (formerly the "Cape Clothing Industry Sick Fund" and "Cape Clothing Industry Sick Benefit Fund") and here-inafter referred to as the "Fund" is hereby continued.
- (2) The administration of the Fund shall be vested in a management committee which shall be appointed at a duly constituted meeting of the Regional Chamber, in terms of the Council's Constitution, and shall consist of six employers' representatives and six employee representatives, with the Chairman and the Vice-Chairman of the Regional Chamber, as ex officio members. A paid secretary, who shall also be the Secretary of the Fund, shall be appointed by the Committee.
- (3) One copy of this Collective Agreement, clause 26 of which shall represent the Rules of the said Fund, and any amendments thereof, shall be kept by the General Secretary of the Council and Regional Secretary of the Regional Chamber.
- (4) (a) The purpose of the Fund is to provide medical and related benefits for employees and their dependants and for such purpose every employer shall each week deduct from the wages of each of his employees for whom wages are prescribed in this Agreement and who has worked during any week, irrespective of the time so worked (hereinafter referred to as a "contributor"), the following amount:

Group 1: In the case of a contributor earning R3,00 per week or less in excess of the wage rate specified for a Qualified Grade B employee in clause 4(1)(a) of Part F of the Council's National Main Collective Agreement -

without dependants: R19,40;
with dependants: R24,10.

G -57

Group 2: In the case of a contributor earning R3,01 per week and more in excess of the wage rate specified for a Qualified Grade B employee in clause 4(1)(a) of Part F of the Council's National Main Collective Agreement -

without dependants: R21,40;

with dependants: R28,10.

- (b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute per week the amounts set out below:

Group 1: In the case of a contributor earning R3,00 per week or less in excess of the wage rate specified for a Qualified Grade B employee in clause 4 (1) (a) of Part F of the Council's National Main Collective Agreement: R7,19.

Group 2: In the case of a contributor earning R3,01 per week and more in excess of the wage rate specified for a Qualified Grade B employee in clause 4 (1) (a) of Part F of the Council's National Main Collective Agreement: R8,58.

- (c) (i) The total sum representing the employer's contributions and the contributor's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional chamber, by not later than the 14th day of each a month following the month to which such contributions relate in the form and manner specified in clause 22 (2) of this part of the Agreement.
- (ii) Should any amount due in terms of this clause not be received by the Regional Chamber 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 Regional Chamber from time to time, calculated from the first day of the month in which the payment is due until the day upon which payment is actually received by the Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.
- (iii) In the event of the Council or Regional Chamber 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 pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.
- (d) Upon receipt of the first eight payments to the Fund in respect of each contributor, the Secretary of the Fund shall allocate a Fund number to each contributor and prepare a membership card reflecting-
- (i) the full name of the employer;
- (ii) the full name of the contributor;
- (iii) the Fund number of the contributor.

The Secretary of the Fund shall thereafter either notify the contributor to call and the card shall be handed to the contributor after the contributor has signed the card in the presence of an official of the Fund, or transmit the card to the employer to hand it to the contributor, in which event it shall be the duty of such employer to ensure that the contributor signs the card immediately on receipt thereof and furnishes a receipt thereof which the employer shall, thereafter, transmit to the secretary of the Fund within seven days.

- (e) All moneys received by the Fund shall be deposited in a banking account for the Fund which shall be opened by the Regional Chamber, in the name of the "Clothing Industry Health Care Fund": Provided that the Management committee may from time to time authorise investments of funds in terms of the Act.
 - (f) The Management Committee shall appoint an auditor for the Fund, who shall be a registered accountant, and determine his remuneration, which shall be paid out of the Fund. The accounts of the Fund shall be audited annually for the 12 months ending 31 December each year from the year commencing 1 January 2003. A copy of the audited financial statements, approved by the Management Committee, shall be signed by the Chairperson of the Management Committee and the Regional Secretary of the Regional Chamber, and a copy provided to the General Secretary of the Council who shall transmit a copy to the Registrar: Labour.
 - (g) Disbursements from the fund shall cease whenever the amount to the credit of the Fund falls below R50 000.
 - (h) The employer shall each week notify the Fund of all contributors who have been absent without pay for four or more consecutive pay weeks in the manner specified in clause 16 (4) of this part of the Agreement.
- (5)
- (a) The contributor shall be liable for any benefits paid to him or obtained by him as a result of his misrepresentation of the facts or as a result of an error in the calculation of such benefits, and the Management Committee may set off the incorrect amount paid to the contributor against any further benefits due to him or recover the amount from the contributor.
 - (b) If a contributor leaves his employment in the industry for the purpose of taking up employment outside the Industry, he shall forfeit all claims to the Fund.
 - (c) Maternity benefits
 - (i) Subject to the provisions of this part of the Agreement a female contributor who-
 - (aa) has continuously contributed to the Health Care Fund for no less than one year; and
 - (ab) has continuously been employed in the Industry for no less than one year;
- as at the date of ceasing employment because of her pregnancy shall be entitled to the maternity benefits set out in (iii) below. Female contributors entitled to maternity benefits shall include the following:
- (A) A female contributor who becomes unemployed through no fault of her own because of retrenchment or closure or liquidation of her employer's establishment, regardless of the stage of her pregnancy at the time of becoming unemployed; and

G -59

- (B) a female contributor who resigns, subject to her pregnancy, at date of resignation, being 22 weeks or more.
- (ii) For the purposes of this subclause, non-contributing periods owing to illness and/or short time shall be deemed to be periods of contribution.
- (iii) Any employee who is entitled to maternity benefits shall receive a lump sum payment equal to 25 per cent of such employee's weekly wage earned at the time of ceasing employment because of her pregnancy, multiplied by 13: Provided that no such payment shall be made to the employee-
- (aa) earlier than four weeks prior to the expected date of her confinement; which expected date shall be determined by a recent medical certificate signed by a medical practitioner indicating the number of weeks' pregnancy and the expected date of confinement; or
- (ab) in the event of a prematurely born child which is alive at birth, unless she produces a birth certificate; or
- (ac) in respect of a miscarriage, abortion or still-born child that occurs during the first 35 weeks of pregnancy; or
- (ad) if the employee dies prior to claiming the benefit due to her in terms of this subclause, until such time as the Master of the High Court has decided to whom such benefit should be paid."
- (6) All contributors from whose wages eight or more consecutive weekly deductions have been made in terms of subclause (4) (a) shall be entitled to the following benefits:
- (a) The services of a medical officer appointed by the Fund;
- (b) consultations with specialists appointed by the Fund;
- (c) free medicines prescribed and dispensed by the medical officers or specialists appointed by the Fund;
- (d) the benefits provided for in subclauses (7), (8) and (9);
- (e) medical and related benefits, as determined by the Management Committee, for their registered dependants.

The benefits provided for in this subclause shall cease eight weeks after the date of termination as a contributor in the Industry.

The cost of medical attention or pharmaceutical supplies rendered or dispensed by medical officers appointed by the management committee in respect of a contributor shall be paid by the Fund, which shall also pay the cost of operating the assisted optical scheme referred to in subclause (8) and the dental surgeries referred to in subclause (9).

Such costs shall be payable in respect of a period not exceeding three weeks in any cycle of one calendar year and shall be subject to such further conditions as may from time to time be decided by the Management Committee.

Where a contributor withdraws the money standing to his credit from the Cape Clothing Industry Provident Fund, and provided such payment is made owing to the employee's leaving the Industry as a result of serious ill health or incapacity prior to reaching the age for retirement from the Cape Clothing Industry Provident Fund, such employee shall be entitled to free medical treatment from any one of the Fund's medical officers and free medicines supplied by such

medical officer during the period of 26 weeks calculated from the date on which such employee leaves the Industry.

Pregnancy shall not be regarded as an "illness" for the purpose of calculating benefits and only one visit to the doctor shall be allowed at the expense of the Fund

- (7) **Gynaecological clinics:** Reasonable facilities shall be afforded to employees to attend the Health Care Fund clinic and upon production of a certificate from the Health Care Fund sister that an appointment has been made, the employer shall pay for time lost by the employee in attending the clinic up to a maximum of two hours in any week.
- (8) **Optical clinic:** The Fund shall provide and equip an optical clinic where employees may be tested by means of an Ortho-rater or similar machine. Where such test shows that further attention is needed, the Fund shall, in consultation with the employer, arrange an appointment with an ophthalmologist and the employee shall be notified of such appointment. The employer shall pay for the time lost by the employee in attending the clinic and for the purpose of keeping the appointment with the ophthalmologist, up to a maximum of two hours in any week. Before an appointment is made with such specialist on behalf of an employee, the employee shall lodge with the Health Care Fund such amount as may from time to time be determined by the management Committee as being the employee's contribution towards the cost of spectacles. Such contribution shall be in respect of standard type frames, as approved by the Management committee. Where a more expensive frame is desired, the additional costs involved shall be borne by the employee.
- (9) **Dental surgeries**
- (a) The Fund shall provide and equip one or more dental surgeries for the benefit of contributors.
- (b) A contributor shall pay not more than the following percentages of the charge submitted by a dental technician for dentures, partial dentures or repairs to dentures which have been prescribed by the Fund's dental surgeon:
- (i) Contributors who have completed 10 years' membership of the Fund, 60 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
- (ii) contributors who have completed five years' membership of the Fund, 80 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
- (iii) contributors who have completed less than five years' membership of the Fund, 100 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures.
- (c) The Management Committee may determine the contributor's payment towards the cost of any other dental treatment: Provided that no contributor shall be required to pay towards the cost of the treatment of dental caries or X-rays taken, as prescribed by the Fund's dental surgeon.
- (d) The Fund shall, in consultation with a contributor, arrange an appointment with the dental surgeon for treatment and the employer shall be notified of the appointment. The employer shall pay the contributor for time lost by the contributor in attending the dental surgery for the purpose of keeping such appointment, up to a maximum of two hours in any week.
- (10) In the event of the expiration of this part of the Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the

G -61

Management Committee until it be either liquidated or transferred by the Council or Regional Chamber to any other fund constituted for the same purpose as that for which the original Fund was created: Provided that the Fund shall be liquidated by a person appointed by the Council or Regional Chamber unless an Agreement providing for the continuation of the Fund or for the transfer of its moneys as aforesaid is entered into within 12 months of the date of expiration of this part of the Agreement.

- (11) In the event of the dissolution of the Council or Regional Chamber, or in the event of its ceasing to function during any period in which this part of the Agreement is binding in terms of the Act, the management Committee shall continue to administer the Fund and the members of the Management Committee existing at the date on which the Council or Regional Chamber, as the case may be, ceases to function or is dissolved shall be deemed to be members thereof for such purpose: Provided, however, that any vacancy occurring on the Management Committee may be filled by the Registrar from employers or employees as the case may be, in the Industry, so as to ensure an equality of employer and employee representatives and of alternates in the membership of the Management Committee. In the event of such Management Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar, he may appoint a trustee or trustees who shall carry out the duties of the management Committee and who shall possess all the powers of the Management Committee for such purpose.

In the event of there being no Council or Regional Chamber in existence, the Fund shall be liquidated upon the expiration of this part of the Agreement in the manner set forth in subclause (12), and if upon the expiration of the Agreement the affairs of the Council or Regional Chamber, as the case may be, have already been wound up and its assets distributed, the balance of the Fund shall be distributed as provided for in section 59 (5) of the Act and the Council's Constitution as if it formed part of the general funds of the Council or Regional Chamber.

- (12) Upon liquidation of the Fund in terms of subclause (10), 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 general funds of the Council or Regional Chamber.
- (13) (a) An employer shall grant an employee who is absent from work through incapacity-
- (i) in the case of an employee who regularly works not more than five days a week, not less than 10 working days', or
 - (ii) in the case of any other employee, not less than 12 working days'.

sick leave in the aggregate on full pay during each period of 12 consecutive months commencing 1 July 1997, and on each July 1st thereafter, for which the employee is employed by him (hereinafter referred to as the 'sick leave cycle'): Provided that during the first 12 consecutive months of employment an employee shall not be entitled to sick leave on full pay at a rate of more than, in the case of an employee who regularly works not more than five days in a week, one working day in respect of each completed period of five weeks of employment and, in the case of any other employee, one working day in respect of each completed month of employment. The sick leave cycle of such employees shall commence on the next July 1st so as to ensure a common Industry anniversary date of 1 July for sick leave.

- (b) The amount to be paid in terms of paragraph (a) to an employee in respect of a day's sick leave on full pay shall not be less than the wage payable to him in

respect of the time (excluding overtime) ordinarily worked by him on that day of the week.

- (c) An employer shall not be bound in terms of paragraph (a) to pay to an employee an amount in respect of any absence from work for a period covering more than two consecutive days, unless the employee produces a certificate signed by a medical practitioner stating the nature and duration of the employee's incapacity: Provided that if an employee has during any period of up to eight weeks received payment in terms of paragraph (a) on two or more occasions without having produced such a certificate to his employer, his employer shall during the period of eight weeks immediately succeeding the last such occasion not be bound to pay the said amount to the employee in respect of any absence from work, unless he produces such a certificate.
- (d) Where an employer is by or under a provision of any law required to pay fees for hospital or medical treatment in respect of an employee and he pays such fees in respect of any incapacity of an employee, the employer may set off the amount so paid against any payment which he has to pay in terms of paragraph (a) to the employee in respect of sick leave because of such incapacity.
- (e) The provisions of paragraph (a) shall not apply in respect of any period of incapacity of an employee in respect of which the employer is by or under a provision of any law required to pay the employee an amount of not less than the equivalent of his wage.
- (f) For the purposes of this subclause-
 - (i) any period during which an employee-
 - (aa) is on leave by virtue of clause 15;
 - (ab) is on sick leave by virtue of paragraph (a);
 - (ac) is absent from work on the instruction or at the request of his employer; or
 - (ad) is undergoing military training,
amounting in the aggregate in any sick leave cycle to not more than 30 weeks in respect of the periods referred to in (aa), (ab) and (ac), plus up to 12 months of any period of military training referred to in (ad) undergone in that sick leave cycle, shall be deemed to be employment with his employer;
 - (ii) any continuous employment which an employee has had with the same employer at the date from which the Minister declares this part of the Agreement binding shall be taken into account, and any sick leave on full pay granted by the employer to that employee during that period of continuous employment shall be deemed to have been granted under this subclause: Provided that the provisions of this paragraph shall apply only to employees exempted from the provisions of subclauses (1) to (12).
- (g) For the purposes of this subclause-
 - (i) the proviso in paragraph (a) shall apply irrespective of whether or not an employee has exceeded the 30 days (or 36 days, as the case may be) under his incomplete 36-month cycle as at 30 June 1997 in terms of the previous Agreement;

G -63

- (ii) any employee who had not been paid by his employer for sick leave taken since 1 July 1997 in terms of the previous agreement, shall be entitled to payment for those days up to a maximum of his new 10-day (or 12 days, as the case may be) entitlement in terms of this part of the Agreement;
- (iii) sick leave not taken in one year cannot be carried forward to the next year and the following year's paid leave of 10 days (or 12 days, as the case may be) may not be taken in advance; however, this does not detract from an employee's right to unpaid sick leave when the 10 days (or 12 days, as the case may be) per year limit has been exceeded;
- (iv) all employees who have been certified as having an illness of 10 days or more (or 12 days, as the case may be) in any period of 36 consecutive months' employment with an employer, commencing on 1 July 1997 and ending on 30 June 2000, and on 1 July of every 36-month period thereafter, may apply to the Health Care Fund Management Committee referred to in subclause (2) for paid sick leave up to a maximum of 30 days (or 36 days, where more than five days per week are regularly worked), or any balance exceeding 10 days (or 12 days, as the case may be) and still remaining in such period of 36 months: Provided that on receipt of such application, the Health Care Fund Management Committee may exercise its right to decide on the merits of the application and rule whether or not the employer should pay for such extended sick leave and this provision shall be referred to as the "Serious Illness or Injury Provision";
- (v) employees and employers shall have the right to dispute a decision of payment or non-payment and they may use the dispute resolution procedures of the Bargaining Council to resolve same and these dispute procedures may be applied where an employee or employer objects to the ruling of the Health Care Fund Management Committee or where the Management Committee is unable to make a ruling for whatever reason;
- (vi) all parents employed in the Industry shall be entitled to use all or part of their annual paid sick leave entitlement (10 or 12 days, as the case may be) in terms of this part of the Agreement or the provisions of the Basic Conditions of Employment act, 1997 (Act No. 75 of 1997), whichever may be applicable under the circumstances, for the purposes of caring for ill dependent children on condition that-
 - (aa) an ill dependent child must have been diagnosed and certified at a Health Care Facility of the Fund as seriously ill or injured and that the parent's presence is necessary during the period of the child's recovery or part thereof; and
 - (ab) prior appointment for consultation at a Health Care Facility of the Fund has been made or prior notification has been given to the principal member's employer and/or where the principal member has reported to a Health Care Facility of the Fund:

Provided that the mere presence of the principal member with an ill child at a Health Care Facility of the Fund shall not automatically entitle such member to a certificate for sick leave payment and that all certificates are to be issued at the sole discretion of the Medical Officer or other professional staff of the Fund and in such cases, the Medical Officer or other professional staff of the Fund shall endorse the certificate with the appropriate wording determined by the Management Committee of the Fund:

Provided further that a principal member parent who presents a certificate for a child, which has been issued by a public funded hospital, shall be eligible for benefits under this arrangement only in instances where the Fund's own professional staff have confirmed the diagnosis and requirements in terms of this provision and for the purposes hereof, a "public funded hospital" shall mean any of those larger State Hospitals which usually provide a 24-hour service:

Provided further that employees in the Industry who fall within the jurisdiction of the Regional Chamber and who have been exempted from contributing to the Fund shall be entitled to attend a Health Care Fund facility of the Fund for purposes of obtaining the required certification in respect of an ill dependent child, however, such an arrangement shall not entitle the employee or his dependents to any medical attention.

- (14) **Indemnity:** The members of the Management Committee and their alternates shall not be liable for any loss to the Fund arising by reason of any act in their bona fide administration of the Fund 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 judgement is given in his favour or in which he is acquitted.
- (15) **Millinery Industry (Cape):** The provisions of this clause shall, mutatis mutandis, apply to the employers and the employees subject to the Agreement for the Millinery Industry, Cape, published under Government Notice No. R. 1162 of 8 June 1979, or the corresponding provisions of any agreement superseding that Agreement.
- (16) The Management Committee shall decide from time to time upon the form and manner in which claims shall be lodged and benefits paid in terms of this clause.
- (17) This clause shall not apply to a casual employee.

27: TRADE UNION SUBSCRIPTIONS

- (1) An employer shall deduct trade union subscriptions and levies weekly from the remuneration of trade union members on their written authorisation, unless an exemption has been granted by the Council or Regional Chamber or by the Independent Exemptions Body: Provided such moneys have been determined in terms of the union's constitution. The employer shall forward such amounts so deducted to the Regional Secretary of the Regional Chamber, for transmission to the union.
- (2) Each month the total amount of such deductions, together with a list showing the names and service record card numbers of the employees and the amounts deducted each week for each employee, shall be forwarded to the Regional Secretary of the Regional Chamber by no later than the fourteenth day of the month succeeding the month in which the deductions were made.
- (3) Every employer shall, in respect of each trade union member employed by him, contribute towards the trade union bursary fund at the rate of 30 cents per employee per week.
- (4) Every employer shall, in respect of each of his employees for whom Bargaining Council contributions are paid in terms of clause 22 of this part of the Agreement, contribute

towards the trade union's HIV/AIDS project at the rate of 45 cents per employee per week.

- (5) Each month the total sum representing trade union subscriptions of employees, bursary fund and HIV/AIDS project contributions by the employer shall be recorded in the manner specified in clause 22 (2) of this part of the Agreement and shall then be forwarded to the Regional Secretary of the Regional Chamber.

28: REGISTRATION OF EMPLOYERS

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of a previous agreement shall, within seven days of the date on which this part of the Agreement becomes binding on him, furnish to the Regional Secretary of the Regional chamber the particulars set out in the form and manner specified by the Regional Chamber.
- (2) In the event of any change in the name under which or the address or addresses at which business is carried on, or among the partners, or if the employer is a company, in the name of its secretary or among its directors or managers or, if the employer is a close corporation, among its members, or in the event of the sequestration of the employer's estate or, if the employer is a company or close corporation, of the winding up of the company or close corporation, or in the event of the transfer or abandonment of the business carried on, or the acquisition or commencement of any other business, or the acquisition or commencement of any other business which is subject to this part of the Agreement, every employer shall furnish to the Regional Secretary of the Regional Chamber within seven days, notice of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement by means of a written statement setting forth full particulars of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement, as the case may be.

29: WAGE GUARANTEE

- (1)
 - (a) Every employer who enters the Industry after the date of coming into operation of this part of the Agreement shall, within seven days of the date on which such employer commences operations in the Industry, lodge with the Regional Chamber a guarantee acceptable to the Regional Chamber.
 - (b) Every employer who entered the Industry prior to the date of coming into operation of this part of the Agreement and who was required to lodge an acceptable wage guarantee with the Regional Chamber shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
 - (c) Where the guarantee lodged by any employer in accordance with the provisions of any previous agreement is no longer valid, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a fresh guarantee as specified in paragraph (a) hereof.
 - (d) Where any employer ceases operations in the Industry and subsequently resumes operations in the Industry, he shall be regarded as a new employer and shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
 - (e) Notwithstanding the provisions of subclause (1) (a) of this clause, where any employer fails to pay levies/contributions due to the Regional Chamber and its funds for a period of two months or more within the periods specified, the

employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.

- (2) (a) Where the guarantee lodged by an employer is deemed to be inadequate by the Regional Chamber, the employer shall on demand by the Regional Chamber increase the amount of such guarantee to an amount deemed adequate by the Regional Chamber.
- (b) An employer shall be permitted to reduce the amount of his guarantee where a reduction in the number of employees engaged by such employer warrants a deduction: Provided that no increase or reduction of the amount of any guarantee shall be required or permitted at intervals of less than six months.
- (3) The Regional Chamber shall be entitled to utilise any guarantee lodged by an employer with the Regional Chamber in terms of subclause (1) to pay any amount which may be due to the Regional Chamber by such employer in respect of levies and contributions or to pay any wages and/or leave pay which may be due to any one or more employees of such employer, where the Regional Chamber is satisfied that such wages and/or leave pay is due and payable to the employees concerned by the employer involved: Provided that the total claim in respect of any one or more employees shall not exceed the total amount of the guarantee lodged with the Regional Chamber.

30: MATERNITY LEAVE

- (1) Subject to the provisions of this part of the Agreement a female employee who-
 - (a) has continuously worked for the same employer for not less than one year; and
 - (b) whose employer has been continuously registered with the Regional Chamber for not less than one year;

as and at the date of commencing her maternity leave shall be entitled to maternity leave not exceeding six months for any one pregnancy.

A female contributor who has less than one year's continuous service with the same employer or whose employer has not been registered with the Regional Chamber, or has been operating in the Industry for less than one year shall not qualify for the maternity leave set out in this subclause but shall instead be entitled to the maternity leave provisions as provided for in section 25 (1) of the Basic Conditions of Employment Act, No. 75 of 1997, and all other provisions related to maternity leave in this clause shall apply to such employees.

- (2) During the period of maternity leave all the rights and obligations that the employee and the employer may have under the employment contract shall be suspended and no benefit shall accrue to the employee during this period except that -
 - (a) provided she has complied with subclause (3) (a), (b), (c) and (d) hereunder, her service will be regarded as uninterrupted;
 - (b) the employer shall continue to pay, in the case of a Health Care Fund contributor, all Health Care Fund contributions as provided for in this part of the Agreement of the Council and, in the case of a Provident Fund contributor, all Provident Fund contributions as provided for in the Collective Agreement of the Provident Fund of the Regional Chamber-in respect of himself and of any employee on maternity leave while such employee is on such leave until-
 - (i) the employee breaches the provisions of this part of the Agreement by failing to notify her employer of her intended date of return to work as

G -67

provided for in subclause (3) (b) below, unless good cause for such failure is shown; or

- (ii) the employee breaches the provisions of this part of the Agreement by failing to return to work on the date as provided for in subclause 3 (a) and (b) below, unless good cause for such failure is shown; or
- (iii) the employee returns to work;

whichever occurs first:

Provided that an employer shall not be required to make the contributions outlined in subclause (2) (b) above for an employee who has worked for the same employer for less than one continuous year or whose employer has not been registered with the Regional Chamber or has been operating in the Industry for less than one year. Such employees shall, for the duration of their maternity leave, be entitled to utilise a Health Care Fund operated facility and shall also not be prejudiced with regard to any benefit to which they may be entitled in terms of the Provident Fund Collective Agreement of the Regional Chamber.

- (3) At the end of the period of maternity leave the employee shall be entitled to resume her work in a position identical or similar to, but not less favourable than the one which she held prior to her taking maternity leave. This obligation on the employer to re-engage the employee is subject to and conditional upon the employee having complied with the following:
 - (a) Completing a form as specified for such purpose by the Regional Chamber at least one month before the date of commencement of her maternity leave: provided that this requirement shall not apply in the event of the employee having to stop work, owing to medical reasons, earlier than anticipated; and
 - (b) notifying her employer at least four weeks prior to her intended date of return to work of her intention to so return to work by completing a form as specified for such purpose by the Regional Chamber, or by any other written notification, and forwarding such form or notice to her employer per registered mail or delivering such notice or form to a responsible officer of the employer and obtaining a written acknowledgement of receipt therefore; and
 - (c) returning to work and resuming her normal duties on the date stipulated and in the form referred to in subclause (a) above, or showing good cause why it was not possible to return to work on the stipulated date; and
 - (d) commencing her maternity leave not earlier than at 22 weeks of pregnancy and returning to work within the six-month period or, where the maternity leave period expires during the employer's annual leave period or the return day falls on a public holiday, returning to work on the first working day after the annual leave period or the public holiday.
- (4) Subject to the provisions of this part of the Agreement, no employer shall require or permit any female employee to work during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after the date of her confinement.
- (5) An employer shall be entitled to fill a position which has become vacant owing to an employee's having gone on maternity leave by employing another person on a fixed-term contract until the return of the employee from maternity leave. The fixed-term contract shall contain the provisions set out in the form specified for such purpose by the Regional Chamber, and shall be signed by both the employer and the temporary employee. The latter shall be remunerated at the wage prescribed in this part of the Agreement for the class in which he is employed.

- (6) Although the contract of employment of an employee may be terminated if she fails to comply with the provisions of subclause (3) (a), (b), (c) and (d) above, such termination will not in any way whatsoever change the temporary nature of the fixed-term contract of employment of any other employee who may have been employed to fill her position.

31: NEGOTIATION OF PROCEDURES AT INDIVIDUAL ESTABLISHMENTS

- (1) An employer shall, at the request of the trade union, negotiate with the trade union at his establishment on procedures relating to-
- (a) grievances;
 - (b) discipline;
 - (c) retrenchment;
 - (d) health and safety.
- (2) The negotiations referred to in subclause (1) shall commence within 15 working days of the date of receipt of any such request.
- (3) This clause shall not detract from the right of an employer to act in a fair manner relating to the above matters, in the absence of negotiated procedures. This clause equally shall not detract from the right of an employee to be treated in a fair manner.

32: ACCESS

- (1) Trade union officials shall be granted reasonable access to establishments provided that prior permission, which shall not be unreasonably withheld, is obtained from an official designated by the employer concerned.
- (2) If the designated official should be absent from the establishment for a period of four hours or longer, the most senior official of the employer who may be present shall be deemed to be the designated official as from the beginning of the four-hour period.
- (3) Access shall be subject to any existing written access agreements signed by both the trade union and the individual employer concerned.
- (4) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.

33: SHOP STEWARDS

- (1) An employer shall recognise the right of the trade union to have shop stewards elected by its members at his establishment.
- (2) A shop steward recognition agreement at an establishment shall, on request by the trade union or the employer, be negotiated between the trade union and the employer. Negotiations shall commence within 15 working days of the date of receipt of such request.
- (3) Provided that an outline of each shop stewards' training course has been lodged with the Regional Chamber, and is available on request to any employer, shop stewards shall be entitled to four days' paid leave per annum per shop steward to attend shop stewards' training courses if such attendance falls within normal working hours.

- (4) In addition to the leave granted in (3) above, shop stewards shall be eligible for and have access to further paid leave to attend to trade union duties. This additional leave shall be calculated at six days per annum per shop steward. At each establishment this additional leave shall be pooled and the shop stewards shall be entitled to use the additional leave so pooled to attend to trade union duties in any manner that the trade union deems fit: Provided that in establishments employing five or fewer employees, the trade union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause.
- (5) Shop stewards at all establishments shall be granted reasonable facilities to enable them to carry out their legitimate trade union duties, provided that prior permission, which shall not be unreasonably withheld, is obtained from management.
- (6) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

34: RETRENCHMENT BENEFITS

- (1) An employer shall 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, unless the employer has been exempted from the provisions of this clause.
- (2) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer shall not be entitled to severance pay in terms of subclause (1).
- (3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable according to law.
- (4) If there is a dispute only about the entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the Regional Chamber, if the parties to the dispute fall within the registered scope of the Regional Chamber.
- (5) An employee who refers the dispute to the Regional Chamber shall satisfy the Regional Chamber that a copy of the referral has been served on all the other parties to the dispute.
- (6) The Regional Chamber shall attempt to resolve the dispute through conciliation.
- (7) If the dispute remains unresolved, the employee may refer it to arbitration.

35: PATERNITY LEAVE

Male employees, regardless of marital status, shall be entitled, subject to prior arrangement, to a maximum of three days' unpaid paternity leave per annum. The employer shall be entitled to require proof of paternity.

36: PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT

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

- (a) The General Secretary or Regional Secretary or relevant official of the Council or Regional Chamber shall appoint a designated agent to investigate the alleged breach and/or refer the matter to the Regional Chamber's Disputes Committee.
- (b) If, upon completion of the investigation the designated agent or Disputes Committee has reason to believe that this part of the Agreement has been breached, the agent or Disputes Committee may endeavour to secure compliance with this part of the Agreement through conciliation.
- (c) At the end of the conciliation process the designated agent or Disputes Committee shall submit a report to the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this part of the Agreement through conciliation and the outcome thereof.
- (d) Upon receipt of the report, the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council may-
 - (i) require the designated agent to make further investigations; or
 - (ii) refer the matter to arbitration in terms of this part of the Agreement; or
 - (iii) take such other steps as may be deemed reasonable.
- (e) If the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council decides to refer the matter to arbitration, he must appoint an arbitrator to hear and determine the alleged breach of this part of the 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 Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary 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 this part of the Agreement;

G -71

- (ii) to make any appropriate award that gives effect to this 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 or for the Council or Regional Chamber to recover its costs of providing the arbitration service: Provided that-

where the Council's or Regional Chamber'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 and/or Regional Chamber's cost of dealing with the dispute;
- (v) to make an award in the absence of a party who is alleged to have breached this part of 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 and notice of the arbitration proceedings 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 part of the Agreement;
- (vi) to vary, rescind or amend any arbitration award made by him or any other arbitrator on good cause shown 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, but only to the extent 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 therefor, shall be served on all interested parties by the Council or Regional Chamber.
- (k) The General Secretary of the Council or Regional Secretary of the Regional Chamber may apply to make the arbitration award an order of the Labour Court in terms of section 158 (1) of the Labour Relations 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 or Regional Chamber.

37: DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this part of the Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
- (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
 - (b) The Council shall, from time to time, adopt by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.
 - (c) When any dispute is allocated to a Regional Chamber in terms of this clause then such Regional Chamber shall have the same rights, powers and obligations as the Council.
- (2) **Accreditation**
- (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
 - (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.
- (3) **Panel of conciliators, arbitrators and senior arbitrators**
- (a) The Council shall appoint-
 - (i) a panel of conciliators, for the purpose of conciliating disputes;
 - (ii) a panel of arbitrators, for the purpose of determining disputes;
 - (iii) a panel of senior arbitrators, for the purpose of determining disputes where-
 - (aa) the nature of the questions of law raised by the dispute;
 - (bb) the complexity of the dispute;
 - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
 - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
 - (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
 - (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
 - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.

G -73

- (ii) The lists prepared by the parties shall be exchanged, and the union parties shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
 - (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' lists shall 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 General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant 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 arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3) (d) above, the Council may remove a member of the panel of conciliators or arbitrators from office-
- (i) for serious misconduct; or
 - (ii) owing to incapacity; or
 - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3) (c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3) (i), a person may be appointed to one or more of the panels of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior

arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

(4) Disputes involving non-parties to the Council

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council shall be resolved by the Council in accordance with the following procedure:

(a) Referral and conciliation of disputes

- (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.
- (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
- (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.
- (iv) The conciliator may, during conciliation proceedings
 - (aa) mediate the dispute;
 - (bb) conduct a fact-finding exercise; and
 - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
- (vi) At the end of the thirty (30) day period, referred to in subclause (4) (a) (iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
- (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

(b) Adjudication of disputes referred to the Council for arbitration

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if-
 - (aa) the Act requires that the dispute be arbitrated; or
 - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.

G-75

- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
- (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) 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 the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to-
 - (aa) give evidence;
 - (bb) call witnesses;
 - (cc) question the witnesses of any other party;
 - (dd) address arguments to the arbitrator;
 - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
- (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, sections 139, 140 and 141 of the Act, read with the changes required by the context.
- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord; and, without limiting the generality thereof, 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;
 - (bb) the award is ambiguous or contains an obvious error or omission;
 - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.

- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

(5) Disputes involving parties to the Council-

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council, which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to the proviso in subclause (5) (d) below.
- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

(6) Compliance procedure and enforcement of collective agreements by Council-

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such a designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
 - (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber.

G -77

- (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by, the Council, where these exist, by-
 - (aa) publicising the contents of the agreement;
 - (bb) conducting inspections;
 - (cc) investigating complaints
 - (dd) endeavouring to secure compliance with the agreement through conciliation; or
 - (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
- (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
- (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
- (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclause (4) (b) (v) to (4) (b) (xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including-
 - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
 - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
 - (cc) charging a party to the arbitration an arbitration fee;
 - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
 - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;

- (ff) any award contemplated in section 138 (9) of the Act;
- (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of this subclause shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

(7) Non-Compliance

- (a) Outsourcing to non-compliant companies shall not be permitted in the industry.
- (b) The parties shall enter into agreements with all Provincial and Local governments which shall have the effect that their sourcing from the Industry shall include a requirement to only source from companies which hold a valid Certificate of Compliance from the bargaining council.

(8) Compliance Promotion

- 8.1 All current non-compliant companies which meet a minimum of 80% of the party-to-party *negotiated wage rate* for current employees, shall be regarded as level B compliant, subject to sub-clause 8.2 below.
- 8.2 All companies described in 8.1 above shall achieve 100% wage compliance within a period of 18 months from 1 September 2012, in 6 monthly equal increments, failing which full compliance enforcement including the execution of writs shall apply to them.
- 8.3 The arrears of non-compliant companies shall be ring-fenced in a 'suspense account' at 100% of the verified arrears value and a written time-bound repayment plan agreed with the bargaining council. They should also sign a legally enforceable acknowledgement of debt.
- 8.4 The current policy that allows for a maximum of 6-months as a repayment period for arrears shall be amended, to allow for a maximum eighteen (18) months repayment period with effect from 1 November 2012.
- 8.5 The arrears will become payable in full should the employer become non-compliant, or default on the repayment plan at any time in future, unless otherwise agreed by the parties.
- 8.6 At every future meeting of the National Bargaining Council, each party shall make one practical concrete suggestion on how to further promote compliance in the industry.
- 8.7 The National Bargaining Council General Secretary shall have unfettered authority to serve any writ of execution upon any employer who fails to become compliant in terms of the new compliance provisions envisaged in this agreement, unless the parties agree otherwise.

- 8.8 Nothing in this agreement shall have the effect of downward migration of conditions of employment for any current employee.
- 8.9 The Trade Union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of this agreement.

38: INDUSTRY PROTECTION FUND

- (1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Regional Chamber, where such programmes are aimed at protecting the Industry in the Western Cape Sub-Chamber of the Cape Chamber of the Council, and jobs within it by improving its competitiveness in the fashion industry.
- (3) The Fund shall commence on 1 July 2001 and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 12 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of subclause (4), contribute an amount of 19 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22 (2) of this part of the Agreement.
- (7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.

This account shall be administered by the Regional Chamber.

- (8) The moneys collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in subclause (2):
 - (a) "Buy Local" campaigns;
 - (b) Combating customs fraud and illegal imports; or for such other strategies as meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Cape Clothing Association (CCA) become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in subclause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber

and shall be recorded as a resolution of the Regional Chamber and subject to approval by the Registrar: Labour.

- (10) The Fund's moneys shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the CCA is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the CCA, as the case may be, may request confirmation in advance from the Regional Chamber in this regard.
- (12) No moneys of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the CCA and the Regional Chamber have signed a written agreement, acceptable to the Registrar: Labour, to secure compliance with the provisions of the Fund as set out herein.
- (13) Any interest that is earned on Fund moneys at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the CCA shall, annually, by the second month of the Regional Chamber's financial year, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan shall be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the parties shall be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he is satisfied that the expenditure-
 - (a) is in terms of the approved plan;
 - (b) is clearly classified by strategy, activity and the nature of the expense; and
 - (c) has been authorised by the Regional Organising Secretary or National Organising Secretary of SACTWU, or the Executive Director of the CCA.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure shall be presented to the Regional Chamber for approval prior to payment.
- (16) Any expenses that have been incurred by SACTWU or the CCA for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the CCA, may be recovered by the Regional Chamber from SACTWU or the CCA, as the case may be.
- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to the Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the CCA shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund.
- (19) In the event that there is a disagreement between the parties as to whether any activity or expenditure or proposed activity or expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing

party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.

- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

39: TRADE UNION CAPACITY BUILDING FUND

- (1) A Trade Union Capacity Building Fund, hereinafter referred to as "the Fund" is hereby established.
- (2) The Fund shall be administered by the Regional Chamber, or its successor in name and title, for and on behalf of the union and its members in terms of the rules of the Fund as approved by the Registrar: Labour.
- (3) Every employer shall, in respect of each employee for whom wages are prescribed in the Council's Main, Knitting Division and Country Areas Collective Agreements for the Western Cape Region, contribute an amount of 39 cents per week.
- (4) The total sum representing the employer's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22 (2) of this part of the Agreement.
- (5) All moneys received by the Regional Chamber for and on behalf of the Fund shall be paid monthly by the Regional Chamber into a banking account styled "Trade Union Capacity Building Fund" opened and administered by the Regional Chamber for the purpose of disbursing it to the union in terms of the rules of the Fund.
- (6) Moneys in the Fund's banking account not required to meet the current disbursements may be invested by the Regional Chamber as per the requirements of the Act.
- (7) Any interest that is earned on Fund moneys shall accrue to the Fund and be used in terms of the rules of the Fund.
- (8) The accounts of the Fund shall be audited annually in terms of generally accepted auditing standards by the Council's auditors.
- (9) The Regional Secretary of the Regional Chamber shall report to the Regional Chamber on a quarterly basis on all expenditure of the Fund, including, but not limited to providing a schedule detailing the income collected and authorised disbursements made to the union and matters incidental thereto as may be requested by the Regional Chamber from time to time. The union shall provide the Regional Secretary of the Regional Chamber, on a monthly basis, with the details of the expenditure incurred in this regard.
- (10) The audited annual financial statements of the Fund shall be signed by the Chairperson and Regional Secretary of the Regional Chamber and a relevant union official and be submitted to the Department of Labour as per the requirements of the Act or any other regulations and conditions that may be set by the Registrar: Labour upon approval of the Fund's rules, or from time to time.

40: COLLECTIVE BARGAINING/DISPUTE RESOLUTION LEVY

- (1) The parties to this part of the Agreement recognise that the Cape Clothing Association (CCA) is the majority employers' organisation in the region covered by the Western Cape Sub-Chamber of the National Bargaining Council for the Clothing Manufacturing

Industry ("the region"), that it incurs significant expenses during annual collective bargaining and by participating in dispute resolution, and that employers who are not its members derive a benefit from these activities without contributing to the cost thereof. Accordingly, the parties agree that every employer in the region who is subject to this part of the Agreement shall pay a monthly fee in an amount calculated in terms of subclause (2) hereunder, on the following basis:

- (a) every employer that belongs to the CCA shall pay its membership fee directly to the CCA;
 - (b) every employer that does not belong to the CCA shall pay a monthly levy equal to the membership fee that the employer would have paid if it were a member of the CCA, to the Regional Secretary of the Regional Chamber on or before the 14th day of each month, together with a breakdown of the amount so paid.
- (2) The amount of the monthly levy shall be as determined at a general meeting of the CCA from time to time, which shall be identical to the monthly membership fee for ordinary members of the CCA.
 - (3) The Regional Secretary of the Regional Chamber shall deposit all moneys received in terms of this clause into a separate, dedicated banking account under the name "CCA levy account".
 - (4) The Regional Chamber shall disburse moneys from the account to the CCA on receipt of acceptable proof from the CCA of expenditure incurred by it as contemplated under clause 5 below.
 - (5) The moneys received in terms of this clause may be used only for expenditure incurred by the CCA in respect of-
 - (a) collective bargaining; and
 - (b) dispute resolution,
and may not be
 - (c) paid to a political party as an affiliation fee; or
 - (d) contributed in cash or kind to a political party or a person standing for election to any political office.
 - (6) The CCA shall arrange for an annual audit of the CCA levy account within six months of its financial year by an auditor who-
 - (a) shall be independent;
 - (b) shall conduct the audit in accordance with generally accepted auditing standards;
 - (c) shall report in writing to the CCA and to the Regional Chamber expressing an opinion as to whether or not the CCA has complied with the provisions of its constitution relating to financial matters and the provisions of subclause (5).
 - (7) Any person may inspect the auditor's report submitted to the Regional Chamber in terms of subclause (6) at the Regional Chamber's offices at Industria House, 350 Victoria Road, Salt River, Cape Town.
 - (8) The Regional Chamber shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.

G -83

- (9) The Regional Chamber's exemption committee may on application from an employer who conscientiously objects to associating with persons other than those who share his religious beliefs or who shows good cause, grant an exemption from the provisions of this clause.
- (10) Any dispute about the application, enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator agreed on by the parties to the dispute: Provided that if no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator shall be appointed by the Regional Chamber from its list of accredited conciliators/arbitrators.
- (11) No payment of levies by non-members shall be made in terms of this clause for any period that the CCA does not represent the employers who employ the majority of employees in the region for whom wages are prescribed in this part of the Agreement. The Regional Chamber shall forthwith inform all concerned if this should occur.
- (12) Notwithstanding the fact that this clause may have ceased to be operative or that the CCA may have lost its majority, the funds in the CCA levy account may continue to be disbursed until they have been exhausted.

41: FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2014: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 September 2013.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

42: ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) The Council shall conduct a survey on the extent and type of contract work in the clothing industry.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.

43: EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

Persons under the age of 15 years: No employer shall employ any person under the age of 15 years.

44: TRADE UNION AGENCY SHOP

- (1) **Scope-** Agency fees will apply to employees who –
 - (a) are not members of the trade union party, but are eligible for membership thereof;
 - (b) are not bound by the provisions of the closed shop clause; and
 - (c) fall within the scope of this part of the Agreement.
- (2) **Union membership:** Employees are not compelled to become members of the trade union party.
- (3) **Agency fee deductions:** Every employer to whom this clause applies shall:
 - (a) deduct from the wages of an employee an amount equivalent to the union subscription; and
 - (b) pay such monies to the Regional Secretary of the Regional Chamber within fourteen days of month-end in which the deductions fall due. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers by not later than the end of the month in which the fees were received.
 - (c) deduct the agency fee from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be -
 - (a) paid to a political party as an affiliate fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

45: PRODUCTIVITY

The Productivity Scheme which was agreed to is:

Contained in Annexure B.

- (1) The bargaining council shall establish a dedicated productivity unit to promote productivity issues in the industry, as part of the NBC's value-added services.
- (2) The bargaining council shall commission a feasibility study for the establishment of a training institute similar to the previous Clothing Industry Training Board (CITB), to be operated under the auspices of the bargaining council as part of the NBC's value-added services.
- (3) Absenteeism

G -85

- (i) The memorandum of Understanding as concluded between the parties on 14 June 2007 and implemented shall remain in effect for the duration of the Agreement only.
- (ii) Where companies' have introduced the productivity scheme as per the provisions of the absenteeism MOU, such schemes are extended for the duration of this agreement, subject to plant level agreements entered into and signed off.

46: HIV/AIDS

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment as set out in Annexure A to this agreement shall be policy in the industry.

World International HIV/AIDS Day

The industry acknowledges the importance of creating awareness of the HIV/AIDS pandemic. To this end, employers are encouraged to grant employees on World International HIV/AIDS Day thirty minutes paid time off to participate in awareness activities agreed to at industry level.

47: CONTRACT EMPLOYEES

Contained in Annexure D.

48: WORKING IN ARRANGEMENTS

Employees shall be permitted to work in the time lost due to strike action incurred during the September / October 2009 protected wage strike at normal rates of pay, provided that this is agreed to at plant level and further provided that where agreed, such employees shall be offered a loan equal to between one week and two weeks' wages, deductible from their wages in equal weekly amounts over a 10 week period.

ANNEXURE A**CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS
AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING
INDUSTRY OF SOUTH AFRICA****1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:
 - eliminating unfair discrimination in the workplace based on HIV status;
 - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
 - promoting appropriate and effective ways of managing HIV in the workplace;
 - creating a balance between the rights and responsibilities of all parties.

2. OBJECTIVES

- 2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
 - (i) creating a non-discriminatory work environment;
 - (ii) dealing with HIV testing, confidentiality and disclosure;
 - (iii) providing equitable employee benefits;
 - (iv) dealing with dismissals; and
 - (v) managing grievance procedures.

G -87

- 2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:
- (i) creating a safe working environment for all employers and employees;
 - (ii) developing procedures to manage occupational incidents and claims for compensation;
 - (iii) introducing measures to prevent the spread of HIV;
 - (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
 - (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:
- (i) between employers, employees and the trade union in the workplace; and
 - (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

3. POLICY PRINCIPLES

- 3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5. Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

4. APPLICATION AND SCOPE

- 4.1. All employers and employees within the clothing manufacturing industry, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this code, the term "workplace" should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.
- 4.3. This Code, however, does not impose any legal obligation in addition to those in the Employment Equity Act, the Labour Relations Act and this code, or in any other legislation referred to in the Code.

- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

5. LEGAL FRAMEWORK

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:

- (i) Employment Equity Act, No. 55 of 1998;
- (ii) Labour Relations Act, No. 66 of 1995;
- (iii) Occupational Health and Safety Act, No. 85 of 1993;
- (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
- (v) Basic Conditions of Employment Act, No. 75 of 1997; and
- (vi) Medical Schemes Act, No. 131 of 1998.
- (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.

- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.

- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.

5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.

5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.

5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.

5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).

5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.

5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

G -89

- 5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].
- 5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT

- 6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:

- (i) recruitment procedures, advertising and selection criteria;
- (ii) appointments, and the appointment process, including job placement;
- (iii) job classification or grading;
- (iv) remuneration, employment benefits and terms and conditions of employment;
- (v) employee assistance programmes;
- (vi) job assignments;
- (ix) training and development;
- (x) performance evaluation systems;
- (xi) promotion, transfer and demotion;
- (xiii) termination of services.

- 6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:

- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
- (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
- (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
- (iv) providing support for all employees infected or affected by HIV and AIDS; and
- (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE**7.1. HIV Testing**

- 7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

- 7.1.2. Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts. ^{1[1]}
- 7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out in item
- 7.1.4. Authorised testing
- Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:
- (i) during an application for employment;
 - (ii) as a condition of employment;
 - (iii) during procedures related to termination of employment;
 - (iv) as an eligibility requirement for training or staff development programmes; and
 - (v) as an access requirement to obtain employee benefits.
- 7.1.5. Permissible testing
- (a) An employer may provide testing to an employee who has requested a test in the following circumstances:
 - (i) As part of a health care service provided in the workplace;
 - (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
 - (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.
 - (b) Furthermore, such testing may only take place within the following defined conditions:
 - (i) At the initiative of an employee;
 - (ii) Within a health care worker and employee-patient relationship;
 - (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
 - (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.
- 7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.
- 7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

^{1[1]} The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the National Bargaining Council for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

G -91

7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.^{2[2]} Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

7.2. Confidentiality and Disclosure

7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.

7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.

7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:

- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
- (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
- (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

8. PROMOTING A SAFE WORKPLACE

8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.

8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:

- (i) the risk, if any, of occupational transmission within the particular workplace;
- (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
- (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
- (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
- (v) the procedures to be followed in applying for compensation for occupational infection;
- (vi) the reporting of all occupational accidents; and
- (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV

^{2[2]} See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
 - (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.
- 9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

10. EMPLOYEE BENEFITS

- 10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits
- 10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

11. DISMISSAL

- 11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.
- 11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

12. GRIEVANCE PROCEDURES

- 12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.
- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.
- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

13. MANAGEMENT OF HIV IN THE WORKPLACE

- 13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:
- 13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and
- 13.1.2. Long and short term measures to deal with and reduce this impact, including:
- (i) An HIV/AIDS Policy for the workplace
 - (ii) HIV/AIDS Programmes, which would incorporate:
 - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
 - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
 - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE

- 14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.
- 14.2. Broadly, impact assessments should include:
- (i) Risk profiles; and
 - (ii) Assessment of the direct and indirect costs of HIV/AIDS;
- 14.3. Risk profiles may include an assessment of the following:
- (i) The vulnerability of individual employees or categories of employees to HIV infection;
 - (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
 - (iii) A profile of the communities from which the organisation draws its employees;
 - (iv) A profile of the communities surrounding the organisation's place of operation; and
 - (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.
- 14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:
- (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
 - (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;
- 14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE

15.1. A Workplace HIV/AIDS Policy

15.1.1. Every workplace should develop an HIV/AIDS policy^{3[9]}, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;
- (ii) an outline of the HIV/AIDS programme;
- (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);
- (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
- (v) grievance procedures in line with item 12 of this Code;
- (vi) set out the means of communication within the organisation on HIV/AIDS issues;
- (vii) details of employee assistance available to persons affected by HIV/AIDS;
- (viii) details of implementation and coordination responsibilities; and
- (ix) monitoring and evaluation mechanisms.

15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including the trade union, employee representatives, occupational health staff and the human resources department.

15.1.3. The policy should reflect the nature and needs of the particular workplace.

15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:

- (i) communicated to all concerned;
- (ii) routinely reviewed in light of epidemiological and scientific information; and
- (iii) monitored for its successful implementation and evaluated for its effectiveness.

15.2. Developing Workplace HIV/AIDS Programmes

15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:

- (i) hold regular HIV/AIDS awareness programmes;
- (ii) encourage voluntary testing;
- (iii) conduct education and training on HIV/AIDS;
- (iv) promote condom distribution and use;
- (v) encourage health seeking behaviour for STD's;
- (vi) enforce the use of universal infection control measures;

^{3[9]} This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

G -95

- (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
- (viii) endeavour to establish a wellness programme for employees affected by HIV/AIDS;
- (ix) provide access to counselling and other forms of social support for people affected by HIV/AIDS;
- (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
- (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4
- (xii) regularly monitor, evaluate and review the programme.

15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

16. INFORMATION AND EDUCATION

- 16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.
- 16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.

GLOSSARY

<i>Affected employee</i>	an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive
<i>AIDS</i>	AIDS is the acronym for "acquired immune deficiency syndrome". AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
<i>Epidemiological</i>	The study of disease patterns, causes, distribution and mechanisms of control in society.
<i>HIV</i>	HIV is the acronym for "human immuno deficiency virus". HIV is a virus which attacks and may ultimately destroy the body's natural immune system.
<i>HIV testing</i>	taking a medical test to determine a person's HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of 'risk behaviour' (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee's or job applicant's HIV status.
<i>HIV positive</i>	having tested positive for HIV infection.
<i>Infected employee</i>	an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
<i>Informed consent</i>	a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
<i>Policy</i>	a document setting out an organisation's position on a particular issue.
<i>Pre and post test counselling</i>	a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
<i>Reasonable Accommodation</i>	means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
<i>STDs</i>	acronym for "sexually transmitted diseases". These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.
<i>Surveillance Testing</i>	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

G -97

ANNEXURE B**PRODUCTIVITY****The following provisions shall be applicable to the plant level productivity incentive schemes:**

- (1) Employers shall pay an amount of 0.5% of the weekly wage into a dedicated productivity incentive bank account. This must be done on a weekly basis or on the date that wages is normally paid, if it is paid at a time other than weekly.
- (2) The money in this productivity incentive bank account is ringfenced for the introduction of plant level productivity incentive schemes only.
- (3) This productivity incentive scheme bank account shall be opened and authorised on the basis of co-signatures, as follows: a person nominated by management plus a SACTWU shop steward (where there are no shop stewards at a workplace, a representative nominated by the workers shall be the second signatory).
- (4) With effect from 1 September 2008, each workplace shall have a period of 2 months within which they must reach agreement between management and the union about how the productivity incentive scheme at that workplace will function and how the incentives are to be paid.
- (5) If there is no productivity incentive scheme agreement reached by 1 November 2008, all the monies in the productivity bank account must be paid out to the workers as part of their wages, until an agreement on an appropriate productivity incentive scheme is reached.
- (6) The productivity incentive scheme agreements reached must ensure that all workers covered by the terms of this agreement, not just some, shall benefit from the incentive scheme.
- (7) All productivity scheme agreements reached must be registered with the National Bargaining Council for the Clothing Manufacturing Industry, within 1 month after agreement has been reached.
- (8) Productivity incentive scheme agreements shall not contain any provisions, which have the effect of downward variation of any term or condition of employment.
- (9) The productivity incentive scheme envisaged in this agreement shall be in addition to and not in place of any existing productivity incentive scheme, which may currently exist.
- (10) If the workplace closes or is liquidated, all the money left in the productivity incentive bank account must be paid out to the employees at that workplace and who are covered by the terms of this agreement.

ANNEXURE D**CONTRACT EMPLOYEES**

- (1) Those contract employees with 12 months' or more employment with the same employer shall be converted into permanent employees.
- (2) All contract employees shall be entitled to receive a pro-rata share of all statutory payments due to permanent employees.
- (3) All contract employees who are in employ as at the end of November each year shall be entitled to full payment for all public holidays which fall during the annual shutdown period.
- (4) Employees who have completed a learnership shall not be placed on a further contract period after the completion of such a learnership, but shall be employed as a permanent fulltime employee.
- (5) Where there are more beneficial arrangements (other than those set out in sub-clauses (1) to (4) above) governing the employment of contract workers, such provisions shall remain effective.

PART H:

**CONSOLIDATED
AGREEMENT
FOR THE
WESTERN CAPE
REGION
(KNITTING)**

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY**NATIONAL MAIN COLLECTIVE AGREEMENT**

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

Cape Clothing Association

Coastal Clothing Manufacturers' Association

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

¹South African Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' 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 National Bargaining Council for the
Clothing Manufacturing Industry.

¹ *This Employer association has not signed the 2013/2014 Party-to-Party Agreement, however, remains an Employer Party to the Bargaining Council and, hence, is reflected on this page.

1. SCOPE OF APPLICATION

The terms of this Agreement shall be observed in the Clothing Manufacturing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

- Part A Provisions for the Eastern Cape Region
- Part B Provisions for the Free State and Northern Cape Region
- Part C Provisions for the KwaZulu-Natal Region
- Part D Provisions for the Northern Region (Clothing)
- Part E Provisions for the Northern Region (Knitting)
- Part F Provisions for the Western Cape Region (Clothing)
- Part G Provisions for the Western Cape Region (Country Areas)
- Part H Provisions for the Western Cape Region (Knitting)
- Part I Provisions for the Non-Metro Areas

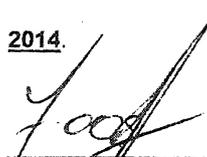
by the employers and employees in the Clothing Industry who are members of the employers' organisations and the trade union, respectively.

2. PERIOD OF OPERATION OF THIS AGREEMENT

- (1) This agreement is binding on the parties hereto from 1 September 2013 until 31 August 2017 unless the parties agree otherwise in writing.
- (2) The parties record that they intend to request the Minister of Labour to extend this agreement to non-parties in the Clothing Industry in terms of section 32 of the Labour Relations Act 66 of 1995. The period of operation of this agreement in respect of non-parties will be determined by the Minister.

Original Agreement signed at CAPE TOWN on behalf of the Parties the 24TH day of FEBRUARY

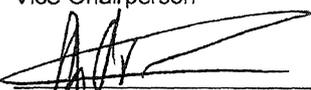
2014.



FREDA GOSTHUYSEN
Chairperson



MARTHIE RAPHAEL
Vice-Chairperson



SICELO NDUNA
General Secretary

PART H : PROVISIONS FOR THE WESTERN CAPE REGION (KNITTING)**1: SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed in the Knitting Division of the Clothing Industry -
- (a) by the employers and the employees who are members of the employers' organisations and the trade union respectively;
- (b) in the Magisterial Districts of The Cape, Wynberg, Simon's Town, Goodwood and Bellville, including those portions of the Magisterial Districts of Wynberg, Simon's Town, Goodwood and Bellville that were used to create the Magisterial Districts of Mitchell's Plain on 2 March 1992, Somerset West, Strand, Malmesbury and George.
- (2) Notwithstanding the provisions of subclause (1), the terms of this part of the Agreement shall -
- (a) only apply in respect of employees for whom wages are prescribed in this part of the 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) Clauses 1(1)(a), 2, 11(4)(b), 14(1), 26(13)(a) to (13)(g)(v) and 37(5) of this part of the Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.
- (4) The Table of Contents of this Part H of the Main Collective Agreement is as follows:

CLAUSE NO.	DESCRIPTION
1.	SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT
2.	PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT
3.	DEFINITIONS.....
4.	WAGES.....
5.	PAYMENT OF WAGES
6.	TIME RECORDS
7.	WAGE INCENTIVES, PIECE-WORK AND TASK-WORK.....
8.	PROPORTION OR RATION OF EMPLOYEES
9.	ORDINARY HOURS OF WORK, MEAL INTERVALS AND REST INTERVALS
10.	OVERTIME.....
11.	PAYMENT FOR OVERTIME AND WORK ON SATURDAYS, SUNDAYS AND PUBLIC HOLIDAYS
12.	SHORT-TIME
13.	PROVISION OF TEA AND OTHER BEVERAGES
14.	CLOSED SHOP
15.	ANNUAL LEAVE AND PAID PUBLIC HOLIDAYS
16.	ENGAGEMENTS, TERMINATIONS, ABSENCES FROM WORK AND TRANSFERS IN OCCUPATION

17.	RECORD CARDS AND AGREEMENT.....
18.	TERMINATION OF EMPLOYMENT
19.	EXEMPTIONS.....
20.	SEATING ACCOMMODATION
21.	TOOLS AND MATERIALS.....
22.	EXPENSES OF THE COUNCIL AND REGIONAL CHAMBER.....
23.	TRADE UNION REPRESENTATIVES ON THE REGIONAL CHAMBER
24.	POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE OF AND IN TERMS OF THIS PART OF THE AGREEMENT.....
25.	OUTWORK AND DISCLOSURE OF EMPLOYERS' PATTERNS ETC.....
26.	CLOTHING INDUSTRY HEALTH CARE FUND
27.	TRADE UNION SUBSCRIPTIONS.....
28.	REGISTRATION OF EMPLOYERS.....
29.	WAGE GUARANTEE
30.	MATERNITY LEAVE
31.	NEGOTIATION OF PROCEDURES AT INDIVIDUAL ESTABLISHMENTS.....
32.	ACCESS
33.	SHOP STEWARDS.....
34.	RETRENCHMENT BENEFITS
35.	PATERNITY LEAVE.....
36.	PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT ..
37.	DISPUTE PROCEDURE
38.	INDUSTRY PROTECTION FUND
39.	TRADE UNION CAPACITY BUILDING FUND.....
40.	COLLECTIVE BARGAINING/DISPUTE RESOLUTION LEVY.....
41.	FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION.....
42.	ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING
43.	EMPLOYMENT OF CERTAIN PERSONS PROHIBITED
44.	TRADE UNION AGENCY SHOP
45.	PRODUCTIVITY (Annexure B).....
46.	HIV/AIDS (Annexure A)
47.	CONTRACT EMPLOYEES (Annexure D).....
48.	WORKING IN ARRANGEMENTS

2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

3: DEFINITIONS

Any expressions used in this part of the Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendment of such Act, and unless the contrary intention appears, words importing the masculine gender shall include females and the singular shall include the plural and vice versa; further, unless inconsistent with the context:

"Act" means the Labour Relations Act, 1995;

"boiler attendant" means an employee engaged in firing a boiler and maintaining the water level and steam pressure;

"casual employee" means an employee who is employed by an employer on not more than three days in any week and who is engaged in one or more of the following duties or capacities;

- (a) general gardening work;
- (b) loading or unloading;
- (c) clearing bush;
- (d) washing vehicles or windows;

"clerk" means an employee who is engaged in -

- (a) writing, typing and filing;
- (b) operating a calculating or a punch card machine;
- (c) any other form of clerical work;

and includes a cashier, despatch clerk, mannequin, storeman, telephone switchboard operator and work study clerk but does not include any other class of employee elsewhere defined in this clause notwithstanding the fact that clerical work may form part of such employee's work;

"Clothing Industry" or "Industry" means, without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the making of all classes of the undermentioned items of apparel/clothing/garments:

Belts (manufactured from cloth), braces, brassieres, caps, collars, corsetry, cummerbunds, gloves, handkerchiefs, hats, hosiery (including ladies' stockings, pantihose and socks), knitted outerwear, knitted underwear; nightwear (including pyjamas), outerwear, protective wear (including overalls and wetsuits), scarves, shirts, suspenders, ties (including bowties), and underwear;

A. and includes-

- (a) all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees, irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
- (b) all types of hand-sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (c) any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
- (d) any part(s) of garments whether by means of a knitting process or otherwise;
- (e) design-room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (f) fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;

H - 4

- (g) screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
- (h) tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
- (i) the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (j) the making of buttonholes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (k) the ironing of garments and/or parts of garments, irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
- (l) the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
- (m) the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
- (n) the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) is (are) performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
- (o) the packing of garments and/or parts of garments, irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees;

B. but excludes-

- (a) belts, braces, garters, suspenders and armlets manufactured from leather;
- (b) boxing gloves;
- (c) retail dressmaking, i.e., the making of single garments to the measurement of individual persons;
- (d) retail millinery, i.e., the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
- (e) tailor-made garments for individual persons, provided such garments are not manufactured in a factory;

"complying employer" means an employer which is registered with the Council and which has registered all permanent and contract employees with the Council, and which has given effect to all collective agreements of the Council which are applicable to it in each of its establishments, or which has received exemption from any collective agreement to the extent of such exemption;

"Council" means the National Bargaining Council for the Clothing Manufacturing Industry registered in terms of section 29 of the Labour Relations Act, 1995;

"day worker" means an employee who is not a shift worker;

"dealer" or **"general dealer"** means a person or persons holding a licence under item 3 of the First Schedule to the Registration and Licensing of Businesses Ordinance;

"dependant" means, for the purposes of the Cape Clothing Industry Health Care Fund, any of the following persons:

- (a) The declared spouse of the contributor living at the same address;
- (b) the unmarried children under the age of 18 of the contributor, including natural offspring, stepchildren or adopted children;
- (c) the unmarried children of the contributor, including natural offspring, stepchildren or adopted children, over the age of 18 but under the age of 25, who are at school or who are full-time students at a tertiary institution or who are physically or mentally disabled;

whose admittance to membership of the Fund is at the sole discretion of the Health Care Fund Management Committee;

"despatch clerk" means an employee who is responsible for the packing or the despatch of goods for transport or delivery and who may supervise the assembling, checking, mass-measuring, packing, marking, addressing or despatching of goods or packages;

"despatch packer" means an employee engaged in making up parcels, cartons or bales in readiness for transport, delivery or posting;

"establishment" means any premises in or in connection with which one or more employees are employed in the Knitting Division;

"experience" means -

- (a) category (1) - in relation to clerks and factory clerks, the total period or periods of employment which such employees have had as clerks and factory clerks, as the case may be, irrespective of the trade in which such experience was gained;
- (b) category (2) - in relation to employees other than clerks, factory clerks, motor vehicle drivers, boiler attendants, despatch packers, travellers' drivers, watchmen or caretakers, labourers and general workers, the total period or periods of employment of employees in the Clothing Industry and/or Knitting Division in any capacity other than that of clerks, factory clerks, motor vehicle drivers, boiler attendants, despatch packers, travellers' drivers, watchmen or caretakers, labourers and general workers;
- (c) category (3) - in relation to supervisors, quality controllers and instructors, the total period or periods of employment which such employees have had in the Clothing Industry and/or Knitting Division as supervisors, quality controllers and instructors;
- (d) category (4) - in relation to pattern graders and pattern makers, the total period or periods of employment which such employees have had in the Clothing Industry and/or Knitting Division as pattern graders and pattern makers;

Provided that where any employee with less than one year's experience has not been re-employed in the Industry within a period of five years from the date on which he was last employed in the Industry, any experience gained shall be ignored for the purpose of calculating the minimum wage at which he may commence service;

"factory clerk" means an employee who is engaged in one or more of the following duties or capacities:

- (a) Calculating piece-work or bonus payments from production schedules;
- (b) checking attendance records or recording particulars of employees at work or absent from work; preparing wage cards or envelopes for subsequent use by another employee;
- (c) checking or recording for production control;
- (d) copying invoices or other documents by machine or hand;
- (e) issuing machine parts, tools, oil and other equipment from workshop store and/or recording same;
- (f) issuing material, lining, canvas, trimming, buttons, cotton and zips to the different departments of an establishment and/or recording same;
- (g) issuing trimming, lining, cotton and zips to employees of an establishment from a substore and/or recording same;
- (h) receiving into stock, goods, material, trimming, tools and other equipment and checking goods received against specifications of goods ordered such as quantity, size and quality;
- (i) recording particulars of materials or general stores consumed or to be consumed or keeping stock records;
- (j) recording particulars of waste;

Provided that a calculator may be used in carrying out one or more of the above duties;

"football jersey cutter" means an employee who is engaged in marking-in and/or cutting material for football jerseys with any power-driven cutting machine, knife or shears;

"general worker" means an employee engaged in one or more of the following duties or capacities:

- (a) Carrying, moving or stacking articles;
- (b) delivering letters, messages or goods outside the factory premises on foot or by means of a bicycle, tricycle or hand-propelled vehicle;
- (c) folding and/or inserting mail, affixing post stamps or labels for posting;
- (d) making tea or similar beverages, snacks or sandwiches and washing cups, saucers and kitchen utensils;
- (e) marking, branding, stenciling or affixing labels on boxes, bales or other containers by hand;
- (f) opening or closing doors, unpacking boxes, packages, bales or other containers;
- (g) operating a duplicating and/or addressograph and/or franking machine;

"Grade A employee" means an employee engaged in one or more of the following duties or capacities:

- (a) **"batching machine operator"** means an employee who rolls fabric onto roller at correct tension in preparation for dyeing by high temperature pressure machine;
- (b) **"bonding machine operator"** means an employee who operates a bonding machine (bonding fabric by fusing two or more pieces of fabric);
- (c) **"colour weigher"** means an employee who prepares chemicals, colouring materials and dyes according to given formulae for subsequent use in various processes;
- (d) **"embossing machine operator"** means an employee who operates an embossing machine;
- (e) **"handyman"** means an employee who makes minor repairs or effects renovations to buildings, fixtures and fittings and who covers ironing and pressing machines or tables with any type of materials;
- (f) **"head warper"** means an employee who exercises control and supervision over two or more warpers;
- (g) **"machine knitter"** means an employee operating one or a set of knitting machines and capable of identifying faults, changing bad needles and making minor adjustments to such items as yarn tensions when necessary;
- (h) **"mechanic"** means an employee who is engaged in making repairs or adjustments to machinery or equipment used directly in the manufacture of products of an establishment;
- (i) **"presser"** means an employee engaged in the pressing of finished garments by machine, but excludes the ironing of garments;
- (j) **"stenter machine operator"** means an employee who operates a stenter machine (drying and setting of fabric);
- (k) **"warp knitter"** means an employee operating one or a set of warp knitting machines and capable of correcting faults, changing and/or straightening needles, filling bars, making minor adjustments and shall include a threader and needle fixer;
- (l) **"mercerizing machine operator"** means an employee who operates a mercerizing machine.

Screen printing operations

- (m) **"negative maker"** means an employee who prepares photographic negatives, separates colours in a design, paints onto clear film sheet in repeat with exact reference marks, as part of the preparation of screens for screen printing;
- (n) **"screen maker (engraver)"** means an employee who engraves and cures screens;
- (o) **"screen printer"** means an employee engaged in -
 - (i) carrying out checks for faults;

- (ii) checking the base fabrics to ensure correct face and quality;
 - (iii) examining screens from wash bays to ensure that they are in a satisfactory condition;
 - (iv) operating a screen printing machine;
 - (v) positioning colour in correct sequence to ensure that colour combination matches the master feeler and colour card;
 - (vi) selecting squeegees to give the penetration and definition required for a quality print, bearing in mind the texture of the fabric;
 - (vii) setting up screens in sequence of colour to be printed on fabric;
 - (viii) squaring off and testing that screens fit according to master feeler;
 - (ix) supervising the handling of screens to and from wash bays;
 - (x) supervising the operations of the colour thrower;
- (p) **"transfer printing machine operator"** means an employee who operates a transfer printing machine in the process of transferring designs from paper to rolls of material and checks the rolls of material during the operation;

"Grade B employee" means an employee engaged in one or more of the following duties or capacities:

- (a) **"assistant batching machine operator"** means an employee who assists a batching machine operator;
- (b) **"assistant bonding machine operator"** means an employee who assists a bonding machine operator;
- (c) **"assistant colour weigher"** means an employee who assists a colour weigher;
- (d) **"assistant stenter machine operator"** means an employee who assists a stenter machine operator;
- (e) assistant to handyman;
- (f) **"assistant transfer printing machine operator"** means an employee who assists a transfer printing machine operator;
- (g) **"assistant warp knitter"** means an employee who watches fabric for flaws, feeds machines with yarn, removes fabric from machines, and can stop and start a machine, all under the general supervision of a knitter and shall include a threaderhand and doffer;
- (h) **"brusher"** means an employee who operates one or more raising or teasing machines;
- (i) **"chaser"** means an employee who searches and locates garments or orders in an establishment and who may organise orders through the establishment;
- (j) **"cook"** means an employee engaged in preparing meals and cooking;
- (k) **"design room assistant"** means an employee who assists employees in the design room in one or more of the following duties or capacities;

- (i) Fetching or taking patterns, garments, parts of garments, cotton, cloth or trimmings to and from the different departments in the establishment;
- (ii) cutting out patterns after they have been marked out by pattern makers or pattern graders;
- (iii) stamping identification details such as size, style and season on cut out patterns;
- (l) **"dry-cleaning machine operator"** means an employee who operates a dry-cleaning machine;
- (m) **"dye-house machine operator"** means an employee who operates a dye-house machine;
- (n) **"embroidery machinist"** means an employee who operates an embroidery machine and who threads up, adjusts tension, checks and/or examines work under needles;
- (o) embroidering and/or beading by hand;
- (p) **"fabric inspector"** means an employee who measures fabric and operates an inspection machine;
- (q) **"factory shop assistant"** means an employee who serves and assists customers and who may select, wrap and receive payment for goods sold;
- (r) **"ironer"** means an employee engaged in ironing and folding garments;
- (s) **"knitter's assistant"** means an employee who brings yarn to and from the machines, removes fabric from the machines, unloads and reloads yarn onto the machine and can stop and start a machine, all under the general supervision of a knitter;
- (t) **"knitting machine hand operator"** means an employee who operates a hand operated knitting machine;
- (u) **"knitting shaper"** means an employee who cuts semi-fashioned garments (body or sleeve blanks) individually or collectively;
- (v) **"laboratory assistant"** means an employee who prepares samples and who make initial and routine tests and record the results thereof;
- (w) **"linker"** means an employee engaged in operating a linking machine;
- (x) **"machinist"** means an employee who performs by sewing machine any operation in the making of clothing;
- (y) **"mender"** means an employee who examines knitted garments, other than berets, for defects and rectifies such defects;
- (z) **"order checker"** means an employee who checks assembled orders;
- (aA) **"padder machine operator"** means an employee who operates a padding machine (finishing fabric-hardening or softening by addition of chemicals);
- (aB) **"passer"** means an employee who examines the finished off garment or parts thereof for flaws and faults;

H -10

- (aC) **"re-cutter"** means an employee engaged in cutting of repairs and/or replacements, including time spent in searching for and matching up cloth;
- (aD) **"ringer"** means an employee who places a ring into a beret preparatory to drying in a steam box;
- (aE) **"seamer"** means an employee engaged in joining material by means of a seaming machine;
- (aF) **"shearer"** means an employee shearing away the teased fibre to give a velvet or felt finish to a beret or to a continuous length of fabric;
- (aG) **"shrinking press operator"** means an employee who operates a shrinking press;
- (aH) sorting, mass-measuring, marking, stacking bales of fabric or knitting yarn, all under the general supervision of a clerical employee;
- (aI) **"tumbling machine operator"** means an employee who operates a tumbling machine;
- (aJ) **"assistant mercerizing machine operator"** means an employee who assists a mercerizing machine operator;

Screen printing operations

- (aK) **"assistant screen maker (engraver)"** means an employee who assists a screen maker (engraver);
- (aL) **"assistant screen printer"** means an employee who assists a screen printer, and who may screen print by hand;
- (aM) **"dark room assistant"** means an employee who makes photographic positives of clear sheets of design colours and masks positives for repeat;
- (aN) **"mixing and filtering operator"** means an employee engaged in -
 - (i) cleaning and preparing drums returned from printing machines;
 - (ii) cleaning mixing equipment;
 - (iii) ensuring thorough mixing and blending of dyes and auxiliaries;
 - (iv) filtering mixed dyes;
 - (v) handling drums from mixers to filter machines;
 - (vi) operating a high speed stirrer;
 - (vii) operating a tub washer;
 - (viii) removing solid or foreign articles from print paste;
 - (ix) supplying clean drums to colour weighers;
 - (x) transferring identifying labels to drums of dye;
- (aO) **"oven and curing operator"** means an employee engaged in drying and curing parts of garments after the printing operation;
- (aP) **"screen controller"** means an employee engaged in -
 - (i) applying masking tape set for automatic printing machines;
 - (ii) checking for faults and rectifying same;
 - (iii) clearing blockages by means of a high pressure gun;
 - (iv) painting in any open motif pinholes;
 - (v) painting in masking and making trial print proof;
 - (vi) placing screens in the rack ready for use;

- (vii) putting end rings into rotary screens;
- (viii) retouching screens;
- (aQ) **"screen preparer"** means an employee engaged in -
 - (i) coating screens;
 - (ii) fitting gauze to frames;
 - (iii) operating a stretching machine;
 - (iv) placing screens in conditioning chamber;
 - (v) preparing and checking screen frames;
 - (vi) removing grease from screens;
- (aR) **"squeegee preparer"** means an employee who makes and prepares squeegees;
- (aS) **"steamer operator"** means an employee engaged in -
 - (i) preparing fabric ready for fixation;
 - (ii) carrying out checks to establish the fixation of dyes;
 - (iii) controlling fabric flow through steamer;
 - (iv) operating a steamer;

and shall include an employee not elsewhere specified in this part of the Agreement;

"Grade C employee" means an employee engaged in one or more of the following duties or capacities:

- (a) Bar filler;
- (b) bar transferer;
- (c) **"bias binding cutter"** means an employee engaged in cutting bias binding;
- (d) **"bobbin-winder"** means an employee engaged in winding bobbins;
- (e) **"box assembler"** means an employee engaged in folding cardboard into containers for garments;
- (f) **"button coverer"** means an employee engaged in covering buttons by hand or machine;
- (g) **"cleaner"** means an employee engaged in cutting or trimming off loose ends of cotton or cloth left on garments or parts of garments by previous operators;
- (h) draw-thread operator;
- (i) drawn-thread mender;
- (j) **"fabric slitter"** means an employee engaged in slitting open continuous lengths of fabric on a pre-determined line;
- (k) **"folder"** means an employee engaged in folding and/or buttoning up garments;
- (l) **"folding machine operator"** means an employee who operates a folding machine;
- (m) forming (including boarding, calendaring and setting);
- (n) hand sewer;

H -12

- (o) **"label printer"** means an employee engaged in printing or writing labels;
- (p) **"line feeder"** means an employee engaged in feeding and/or collecting work, garments, parts of garments, cotton, trimmings, cartons, boxes and labels on the line or in a department of an establishment;
- (q) **"make-up sorter"** means an employee who moves semi-processed cloth from one point to another and joins cloth together to dyelots;
- (r) **"marker"** means an employee engaged in marking the position of pockets, flaps, vents, buttons or button holes;
- (s) mending berets, i.e. darning holes in berets;
- (t) **"packer"** means an employee engaged in -
 - (i) attaching belts to garments;
 - (ii) assembling garments into bundles or orders prior to their being sent to the despatch department;
 - (iii) attaching swing or identification tickets to garments;
 - (iv) bagging garments;
 - (v) packing garments into boxes or other suitable wrapping;
 - (vi) sorting garments;
- (u) **"parts examiner"** means an employee engaged in examining cut and/or uncut parts of lays;
- (v) re-ironing ribbons and light pressing of bulky knits;
- (w) **"sloper"** means an employee engaged in marking and trimming the shape of necks of garments;
- (x) sock trimmer;
- (y) **"sorter"** means an employee engaged in -
 - (i) sorting and bagging dye-lots prior to dying;
 - (ii) sorting out for various operations;but excluding sorting parts from the cut lay;
- (z) **"spotter"** means an employee who removes spots and stains;
- (aA) **"stamper"** means an employee stamping sizes and/or identifying work numbers on garments or parts of garments;
- (aB) **"swatch cutter"** means an employee engaged in cutting travellers' swatches;
- (aC) **"ticket sewer"** means an employee engaged in stitching tickets on garments by machine;
- (aD) toe-closing by machine;

- (aE) **"transferer"** means an employee engaged in transferring or stencilling garments, parts of garments or panels by hand or machine;
- (aF) **"turner"** means an employee engaged in turning garments or parts of garments;
- (aG) **"warper"** means an employee who prepares warps from cones or bobbins for a warp knitting or similar machine and prepares the beam;
- (aH) wax-ring maker;
- (aI) **"winder"** means an employee engaged in operating a yarn winding machine;
- (aJ) zip machine operator;
- (aK) glueing cover over hat band after joining by means of thermal glue gun;
- (aL) glueing hat band on to hat by means of thermal glue gun;
- (aM) glueing pompons on to caps by means of thermal glue gun;
- (aN) **"fringe threader"** means an employee threading and knotting strands of thread into ends of scarves and trimming the fringe after threading;
- (aO) **"fuser"** means an employee who fuses motifs onto garments'

"hourly rate" or "hourly wage" means the weekly wage prescribed in clause 4(1) read with clause 4(10), divided by -

- 60 in the case of a watchman or caretaker;
- 46 in the case of a boiler attendant;
- 42½ in the case of all other employees;

"incapacity" means the inability to work owing to any sickness or injury of an employee, other than sickness or injury caused by the employee's own misconduct. Provided that any such inability to work caused by an accident or a scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993), shall be regarded as incapacity only during any period in respect of which no disablement payment is payable in terms of that Act;

"instructor" means an employee who is responsible for training employees in any establishment or who in any manner whatsoever assists an employer in or about a factory in carrying out training programmes to improve the productivity of his employees;

"labourer" means an employee engaged in one or more of the following duties or capacities;

- (a) Binding, wiring or strapping boxes or bales or other containers;
- (b) cleaning and/or washing premises, plant, machinery, vehicles, tools and/or other articles;
- (c) fitting and mending machine belts; cleaning, oiling and greasing machines; moving tools, equipment and machines; changing needles; cleaning cotton and/or cloth from underneath throat plate;
- (d) general gardening work;
- (e) loading or unloading vehicles, trailers or international standard containers;

H -14

"layer-up" means an employee engaged in laying up material and may include slitting the ends and sides and/or who sorts parts from the cut lay;

"learner" means an employee whose period or periods of employment do not entitle him to be paid the wage specified in this part of the Agreement for a qualified employee of his class;

"level B compliance" refers to the status of non-compliant employers who bring themselves within the provisions of clause 37(8). For so long as such employers abide by all the conditions set out therein, no writs of execution in respect of non-compliance will be enforced against them, and they will be entitled to Level B Compliance Certificates from the Council;

"main collective agreement" means the Main Collective Agreement for the Western Cape Region of the Council which prescribes wages for employees employed in the Industry, other than in the Magisterial Districts of George and Worcester and those employed in the Knitting Division;

"monthly wage" means the weekly wage multiplied by four and one third;

"motor vehicle driver" means an employee engaged in driving a motor vehicle, scooter or fork lift, and for the purposes 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;

"normal shift worker" means an employee who works shifts, other than a twilight shift, in or in connection with an activity with respect to which work is performed in two or more shifts per day;

"patent machine" means a button, buttonhole, padding or felling machine;

"paternity" means any event connected to the birth or adoption of a child parented by an eligible employee;

"pattern grader" means an employee who grades patterns to various sizes and makes ancillary patterns to a master pattern and includes an employee engaged in making master patterns for pleating process;

"pattern maker" means an employee engaged in designing and/or making master patterns;

"piece-work" means any system by which earnings are calculated upon the quantity or output of work performed;

"qualified" means that an employee has completed his learnership in terms of this part of the Agreement;

"quality controller" means an employee, other than a passer, who carries responsibility for quality control in a factory or any department of a factory, i.e. ensuring that the quality of any garment or part of any garment, whether in a finished or unfinished state, meets the standard of quality determined by the employer;

"Regional Chamber", for purposes of this part of the Agreement, means the Cape Chamber (Western Cape Sub-Regional Chamber) of the Council;

"set leader" means an employee who is responsible for the work executed by the employees composing a set or team under his charge and who takes an active part in the operation of a set;

"set of workers" (sometimes referred to as a "set") means a team of employees numbering three or more, engaged in performing sectional operations in the making up of garments, usually under the direction of a leader;

"shop steward" means an employee at any establishment who has been duly elected as a shop steward in terms of the constitution of the trade union and who has been recognised by the employer as a shop steward;

"short-time" means a temporary reduction in the number of ordinary weekly hours of work in a establishment due to slackness of work or other exigencies of trade;

"storeman" means an employee in general charge of stores and/or finished products and who is responsible for receiving, storing, packing or unpacking goods in a store or a warehouse and/or delivering goods from a store or warehouse to the consuming departments in an establishment or for despatch;

"supervisor" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to the care of such employee in a factory or a department of a factory;

"task-work" means the setting by an employer (or his representative) to an employee of a stated number of garments or parts of garments to be completed by such employee within a specified time;

"trade union funds" includes, without limiting the generality of its meaning, trade union subscriptions and levies;

"traveller's driver" means an employee accompanying the traveller on his journey and assisting the traveller in driving and in packing, unpacking and displaying samples;

"twilight shift" means a shift, other than a normal shift, introduced by an employer between the hours 16h30 and 23h00 on any day from Monday to Friday;

"twilight shift worker" means an employee, other than a normal shift worker, employed any time between the hours 16h30 and 23h00 on any day from Monday to Friday with the specific intent of being employed on a twilight shift and who is not ordinarily employed by the employer who has introduced the twilight shift or any other employer;

"unladen mass" means the mass of any motor vehicle or trailer as recorded in a licence or certificate issued in respect of such motor vehicle or trailer by any authority empowered by law to issue license in respect of motor vehicles: Provided that in the case of two or three-wheeled motor cycle, motor scooter or auto-cycle or a cycle fitted with an auxiliary engine the unladen mass shall be deemed not to exceed 1 360 kg;

"wage" means the amount of money paid to an employee in terms of clause 4(1), read with clause 4(12), in respect of his ordinary hours of work as specified in Clause 9:

Provided that -

- (i) if an employer regularly pays an employee in respect of such ordinary hours of work, an amount higher than that specified in clause 4(1), read with clause 4(9), it means such higher amount;
- (ii) the first proviso shall not be construed so as to refer to, or include, such remuneration which an employee who is employed on any basis provided for in clause 7 received over and above the amount which he would have received had he not been employed on such basis;

"watchman or caretaker" means an employee engaged in guarding premises, buildings or other property;

H -16

In classifying an employee for the purposes of this part of the Agreement, he shall be deemed to be in that class in which he is wholly or mainly engaged.

4: WAGES

- (1) Subject to the provisions of this part of the Agreement, the minimum wages that shall be paid to and accepted by the undermentioned classes of employees employed at Garment Knitting Establishments shall be as follows:

DESCRIPTION			Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
			R	R	R	R
Part A - Cutting Department						
Pattern Maker:						
(a)	Qualified		1 687.00	1 349.50	1694.00	1355.00
(b)	Learner					
	First year					
		First six months of experience	945.00	756.00	948.50	759.00
		Second six months of experience	1 043.50	835.00	1047.00	837.50
	Second year					
		First six months of experience	1 141.50	913.00	1147.00	917.50
		Second six months of experience	1 246.50	997.00	1253.00	1002.50
	Third year					
		First six months of experience	1 359.50	1 087.50	1365.00	1092.00
		Next four months of experience	1 467.50	1 174.00	1474.00	1179.00
		Thereafter, the wage specified in (a), i.e.	1 687.00	1 349.50	1694.00	1355.00
Pattern Grader						
(a)	Qualified		1 361.00	1 089.00	1366.50	1093.00
(b)	Learner					
	First year					
		First six months of experience	888.50	711.00	893.50	715.00
		Second six months of experience	945.00	756.00	948.50	759.00
	Second year					
		First six months of experience	1 000.50	800.50	1006.00	805.00
		Second six months of experience	1 072.00	857.50	1077.00	861.50
	Third year					
		First six months of experience	1 141.50	913.00	1147.00	917.50
		Next four months of experience	1 215.50	972.50	1221.50	977.00
		Thereafter, the wage specified in (a), i.e.	1 361.00	1 089.00	1366.50	1093.00
Football Jersey Cutter						
(a)	Qualified		946.00	757.00	950.00	760.00
(b)	Learner					

H -17

DESCRIPTION			Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
			R	R	R	R
		First year				
		First six months of experience	710.00	568.00	713.00	570.50
		Second six months of experience	752.50	602.00	756.00	605.00
		Second year				
		First six months of experience	792.50	634.00	796.00	637.00
		Second six months of experience	834.00	667.00	838.50	671.00
		Third year				
		First four months of experience	875.50	700.50	878.50	703.00
		Thereafter, the wage specified in (a), i.e.	946.00	757.00	950.00	760.00
Layer-up						
	(a)	Qualified	815.50	652.50	819.00	655.00
	(b)	Learner				
		First year				
		First six months of experience	687.00	549.50	689.50	551.50
		Second six months of experience	710.00	568.00	713.00	570.50
		Second year				
		First six months of experience	742.00	593.50	745.50	596.50
		Thereafter, the wage specified in (a), i.e.	815.50	652.50	819.00	655.00
Part B - Factory Operatives						
Grade A employee:						
	(a)	Qualified	1 043.50	835.00	1047.00	837.50
	(b)	Learner				
		First year				
		First six months of experience	734.00	587.00	737.00	589.50
		Second six months of experience	791.50	633.00	794.50	635.50
		Second year				
		First six months of experience	845.50	676.50	848.50	679.00
		Second six months of experience	888.50	711.00	893.50	715.00
		Third year				
		First four months of experience	946.00	757.00	950.00	760.00
		Thereafter, the wage specified in (a), i.e.	1 043.50	835.00	1047.00	837.50
Grade B employee:						
	(a)	Qualified	891.50	713.00	895.50	716.50
	(b)	Learner				
		First year				
		First six months of experience	723.00	578.50	727.00	581.50
		Second six months of experience	761.50	609.00	764.00	611.00
		Second year				
		First six months of experience	799.50	639.50	803.00	642.50

H -18

DESCRIPTION			Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
			R	R	R	R
		Thereafter, the wage specified in (a), i.e.	891.50	713.00	895.50	716.50
(c)	If advanced to Grade A employee:					
		First six months from date of advancement	891.50	713.00	895.50	716.50
		Second six months from date of advancement	917.50	734.00	922.00	737.50
		Third six months from date of advancement	946.00	757.00	950.00	760.00
		Thereafter, the wage specified for a qualified Grade A employee, i.e.	1 043.50	835.00	1047.00	837.50
Grade C employee:						
(a)	Qualified		791.50	633.00	794.50	635.50
(b)	Learner					
	First year					
		First six months of experience	709.00	567.00	712.00	569.50
		Second six months of experience	729.00	583.00	732.50	586.00
		Thereafter, the wage specified in (a), i.e.	791.50	633.00	794.50	635.50
(c)	If advanced to Grade B employee:					
		First six months from date of advancement	791.50	633.00	794.50	635.50
		Next six months from date of advancement	799.50	639.50	803.00	642.50
		Thereafter, the wage specified for a qualified Grade B employee, i.e.	891.50	713.00	895.50	716.50
Part C - Clerical employees						
Clerk						
(a)	Qualified		1 148.50	919.00	1154.50	923.50
(b)	Learner					
	First year		847.50	678.00	851.00	681.00
	Second year		921.50	737.00	926.00	741.00
	Third year					
		First four months of experience	1 007.00	805.50	1011.00	809.00
		Thereafter, the wage specified in (a), i.e.	1 148.50	919.00	1154.50	923.50
Factory Clerk						
(a)	Qualified		862.50	690.00	867.00	693.50
(b)	Learner					
	First year		687.00	549.50	689.50	551.50
	Second year		731.50	585.00	735.00	588.00
	Third year					
		First four months of experience	791.50	633.00	794.50	635.50
		Thereafter, the wage specified in (a), i.e.	862.50	690.00	867.00	693.50
Part D - General						
Boiler attendant			818.50	655.00	822.50	658.00

H - 19

DESCRIPTION		Group A (i.e. employees on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%	Group B (i.e. employees NOT on the 0.5% Productivity Incentive Scheme)	New employees on Incentivised Scheme effective 1 September 2013 = 80%
		R	R	R	R
	Despatch packer	845.50	676.50	848.50	679.00
	General Worker	791.50	633.00	794.50	635.50
	Labourer	799.50	639.50	803.00	642.50
	Motor vehicle driver of a vehicle, the unladen mass of which, together with the unladen mass of any trailer or trailers drawn by such vehicle -				
(a)	does not exceed 1 360 kg	845.50	676.50	848.50	679.00
(b)	exceeds 1 360 but not 2 720 kg	877.50	702.00	881.50	705.00
(c)	exceeds 2 720 kg	1 000.50	800.50	1006.00	805.00
	Supervisor, quality controller and instructor	1 072.00	857.50	1077.00	861.50
	Traveller's driver	877.50	702.00	881.50	705.00
	Watchman or caretaker, whose ordinary hours of work are -				
(a)	less than 60 hours per week	912.00	729.50	916.50	733.00
(b)	60 hours per week	957.00	765.50	962.00	769.50

NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by 7% Across-the-Board.

(2) New Employees

2.1 New employees shall be paid a weekly wage of 70% of the rate in metro areas, subject to the following provisions:

2.1.1 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a period of 3 years.

2.1.2 The provision is only applicable to compliant companies.

2.1.3(a) The new entry-level wage provision will continue in force and effect as an industry-wide provision after the 31st August 2014 if there has been an increase in employee strength of compliant employers in the industry of at least 15% as at 31st March 2014, monitored on a bi-annual basis.

(b) The bi-annual benchmark monitoring shall be measured against the following schedule of new employment growth:

1 March 2012:	3% increase
1 September 2012:	6% increase
1 March 2013:	9% increase
1 September 2013:	12% increase
1 March 2014:	15% increase

H -20

- 2.1.4 It is only applicable to those compliant companies who were in existence and operational as at 1 June 2011.
- 2.1.5 All other provisions of the main agreement shall be applicable to new employees.
- 2.1.6 The closed shop shall be applicable to all new employees.
- 2.1.7(a) The employee strength to determine whether or not there has been an increase in employee strength will be measured by comparing the employee strength of compliant employers whose businesses are registered with the bargaining council on the 1st June 2011, as per clause 2.1.3, and to that of the employee strength of compliant employers whose businesses are registered with the bargaining council on the 31st March 2014, i.e. a period of 30 months following the implementation of this *Agreement*.
- (b) In the event that the employee strength does not increase as per the provisions of this *Agreement* and more specifically, the provisions of *Clause 2.1.3* above, the provisions of the new-entry wage provision will terminate.
- (c) Upon such termination of the application of the new entry level wage provision, the wages of all employees earning the new-entry wage will be increased to the full applicable gazetted wage for all job categories from the first pay week following the 31st August 2014, unless the parties during the 2014/2015 round of annual or other negotiations agree otherwise or agree to an alternative to address any further job losses or the absence of job growth in the industry.
- 2.1.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to employ employees at the rates specified in sub-clause 2.1.3 (a) above.
- 2.1.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 2.1.10 Qualified employees shall be employed at the qualified new entry rate, subject to sub-clause 2.1.1.
- 2.1.11 Effective 1st September 2011, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.

(3) Incentivised Wage Rates

The 'new entry wage rates' provisions as specified in clause 4 of the 2011/2012 party-to-party substantive agreement shall be abolished and replaced with the following incentivised wage rates provisions, applicable to new employees only:

- 3.1 With effect 1 September 2013, new employees shall be paid a guaranteed wage of no less than 80% of the normal qualified gazetted wage rate applicable to current employees, subject to the following provisions:
- 3.2 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work

experience but who have not been employed in the industry for a minimum period of 3 years, unless the applicant employee agrees otherwise with his/her prospective employer.

- 3.3 The guaranteed wage rate as specified in sub-clause 3.1 above shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the qualified rate, provided the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1 September 2012, once a national framework agreement governing the incentive portion has been agreed.
- 3.4 The provisions of clause 3 of this circular is only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.
- 3.5 All other provisions of the industry's Main Agreement shall be applicable to new employees.
- 3.6 The closed shop shall be applicable to all new employees.
- 3.7 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to re-employ employees at the rates specified in sub-clause 3.1 above
- 3.8 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 3.9 Qualified employees shall be employed at the qualified rate, subject to sub-clause 3.2 above.
- 3.10 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party to party agreement, which was subsequently extended to non-parties and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus the annual increases, and subject to the companies at which they are employed meeting the compliant employment growth targets as set out in the 2011/2012 wage agreement.
- 3.11 Effective 1st September 2012, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.
- 3.12 The parties shall negotiate a national framework agreement at national bargaining council level, to give enabling effect to the plant level incentivised wage component as contemplated in sub-clause 3.3 of this agreement. This shall be finalised within a period of 4 months with effect from 1 October 2012 (excluding the annual shutdown period). Thereafter, companies who qualify for the provisions of clause 4 of the substantive agreement and who wish to implement it shall have a 2 month period to conclude plant-level incentive arrangements in terms of the provisions of the national framework agreement.
- 3.13 The deadlock breaking mechanism for the national framework agreement is either binding interest arbitration or, at the end of the prescribed period,

H -22

the entire 80% dispensation falls away, unless other forms of deadlock breaking mechanisms are agreed between the parties.

- 3.14 Should the 80% dispensation fall away in consequence of the provision in sub-clause 3.13 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreement rate.
- 3.15 The deadlock breaking mechanism for operationalising the incentive component at plant level shall consist firstly of a facilitation process by a panel of experts jointly appointed by the employer and trade union parties to this agreement and if not resolved, by an advisory award by the panel, unless other forms of deadlock breaking mechanisms are agreed to between the parties.
- 3.16 The parties agree that the only outstanding issue pertaining to the national incentivised framework agreement is the deadlock breaking mechanism. The Parties agree to finalise this matter within two (2) weeks from the date of signing this agreement, failing which the provision of sub-clause 3.13 above will become effective.
- (4) **Set Leaders:** In addition to the wages computed in terms of subclause (1), any employee when called upon to perform the duties of a set leader shall receive and be paid an additional R4 per week whilst so employed.
- (5) **Basis of Contract:** For the purposes of this clause the contract of employment of an employee, other than a casual employee and a twilight shift worker, shall be on a weekly basis, and an employee shall be paid in respect of a week not less than the full weekly wage prescribed in subclause (1), read with subclause (7) and subclause (11), for an employee of his class, whether he has in that week worked the maximum number of ordinary hours of work applicable to him in terms of clause 9, or less, and subject to the provisions of clause 30, each contract of service shall be deemed to have been continuous from the time the employee entered the employer's service until the time such service is legally terminated: Provided that the remuneration payable to a twilight shift worker shall accrue at an hourly rate.
- (6) **Incremental Dates:** An employer shall pay increases due to his employees during each calendar year on the following basis:
- (a) All employees who qualify for an increase during the period 1 January to 31 March of the calendar year shall be granted such increases with effect from the pay-week in which 15 February of such year falls. When an employee is not in employment during the said pay-week he shall become entitled to the increase with effect from the date he is employed.
- (b) Likewise and in the same manner all increases which become due during the periods 1 April to 30 June, 1 July to 30 September and 1 October to 31 December of each calendar year shall be granted to employees with effect from the pay-week in which 15 May, 15 August, and 15 November fall within the respective periods.
- (c) In calculating whether an employee qualifies for an increment, all periods of absence from work shall be counted, except any absence without pay for a continuous period in excess of four consecutive pay weeks and in respect whereof full particulars of the name of the employee and the period of absence have been advised to the Regional Chamber within 14 days of the employee's resuming work.
- (7) **Differential rates:** An employer who requires or permits a member of one class of his employees to perform for longer than one hour in the aggregate on any day, either

in addition to his own work or in substitution therefore, 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 wage higher than that of his own class:

is prescribed in subclause (1), shall pay such employee in respect of that day-

- (i) in the case referred to in paragraph (a), not less than the daily wage calculated on the higher weekly rate: and
- (ii) in the case referred to in paragraph (b), not less than the daily wage calculated on the basis of the highest weekly wage prescribed in subclause (1) for the higher class:

Provided that where the difference between classes is, in terms of subclause (1), based on experience, the provisions of this subclause shall not apply.

- (8) **Shift Allowance:** In addition to the wage specified in sub-clause (1), read with **sub-clause (12)**, a normal shift worker shall, in respect of his shift hours worked in any week, be paid an additional 12,5% on such wage.
- (9) In an establishment where a supervisor is not employed any employee (other than a set leader) who is responsible for the work performed by other employees, shall be entitled to and be paid not less than the wage prescribed for a supervisor in subclause (1) read with subclause (11).
- (10) **Casual employee:** A casual employee shall be paid in respect of every day or part of a day of employment not less than one fifth of the weekly wage prescribed for a labourer in subclause (1) read with subclause (11).
- (11) **Annual Bonus:** Each employee shall be paid an annual bonus on the day of his employer's annual closure in December of each year, equivalent to 2.0% of his annual basic prescribed wage (excluding overtime earnings and production bonuses) calculated from 1 January to 31 December. A pro rata share thereof shall be paid to an employee who leaves employment before 31 December.

The bonus is inclusive of and not additional to any annual bonus paid by an employer and a shop steward may not be prejudiced in respect of annual bonus earnings for time off authorised by his employer, in attending to union business.

- (12) Notwithstanding anything to the contrary herein, the wage of an employee who, immediately prior to the date on which this part of the Agreement comes into operation, is in receipt of a wage higher than that specified for the class of work in which he is engaged shall, with effect from the date on which this part of the Agreement comes into operation, be increased by an amount not less than the difference between the wage as agreed by the Parties as at 1 September 2013 and the wage specified for the same class of work in the agreement in force immediately prior to that date.
- (13) **2001 Allowance:** In addition to the wage specified in sub-clause (1), each employee for whom wages are prescribed in this part of the Agreement, shall be paid an allowance equal to 1,28% of the wage prescribed in the Agreement published under Government Notice No R.112 of 9 February 2001 plus an amount of 20 cents: Provided that this sub-clause shall not apply to an employee who, by virtue of the operation of clause 1(2)(b), previously fell outside the provisions of the Agreement published under Government Notice No R.112 of 9 February 2001 and provided further that in the event of an employee who has been exempted from contributing to

the Cape Clothing Industry Provident Fund, this allowance will be reduced to an amount of 20 cents i.e. discarding the 1,28% portion thereof.

5: PAYMENT OF WAGES

- (1) Nothing in this part of the Agreement shall operate to reduce the wage which was being paid immediately prior to or to which any employee was entitled at the date of the commencement of this part of the Agreement whilst such employee is employed by the same employer. The provisions of this subclause shall also apply in the case of any employee whose services are terminated by such employer subsequent to the date of commencement of this part of the Agreement and who is re-engaged by such employer.

For the purposes hereof, 'Agreement' shall include any amendment thereto.

- (2) (a) The wages due to an employee, other than a normal shift worker or a casual employee, shall be paid in cash each Friday during working hours, but not later than 17h30, at the place and time specified in the notice posted up in the establishment.

Any time which may elapse after the normal hours of work and the time at which payment is made shall be deemed to be overtime. If a pay-day falls upon a public holiday, payment shall be made during working hours on the day preceding such holiday.

In the case of a normal shift worker the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during the usual office hours of the establishment, but not later than twenty-four hours after the usual pay day.

In the case of a twilight shift worker, the wages due to an employee shall be paid at a time agreed upon between such employee and his employer, which time shall be during a twilight shift, but not later than twenty-four hours after the usual pay day.

- (b) Employees engaged upon a monthly basis shall be paid not later than the last day in each calendar month, or on the termination of employment if this should take place before the ordinary pay-day of the employee.
- (c) Where the contract of employment is terminated on any working day other than the ordinary pay-day in the establishment, all wages or other moneys due to the employee shall be paid immediately upon termination of employment, and where this is not done the employee shall also be entitled to his normal wages for any period up to the time at which payment is made.
- (d) A casual employee shall be paid in cash for each day worked not later than the usual closing time of the establishment.
- (3) **Wage envelopes:** Any wages must be handed to employees in sealed envelopes which bear the name of the employee, his factory number, the name of the employer, the number of hours worked by the employee, his prescribed weekly wage rate, deductions made in terms of subclause (4) and clause 12 (i.e. short-time), and the period in respect of which payment is made.
- (4) No deductions of any description, other than the following, shall be made from the amount due to an employee:

- (a) except where otherwise provided in this part of the Agreement, whenever an employee is absent from work and such absence is not at the request or on the instructions of his employer, a pro rata deduction for actual time lost;
 - (b) with the written consent of the employee, deductions for savings and/or holiday funds: Provided that the commencement or continuance of a savings and/or holiday fund is subject to the approval of the Regional Chamber, after the employer has agreed to deposit such moneys deducted from his employee's wages in a trust fund under the supervision of the Regional Chamber;
 - (c) levies in terms of clause 22, Health Care Fund contributions in terms of clause 26 of this part of the Agreement, and provident fund contributions in terms of clause 6 of the Provident Fund Agreement;
 - (d) any amount paid by an employer compelled by law, ordinance or legal process to make payment on behalf of an employee;
 - (e) where scissors have been provided by an employer to his employee, a weekly installment not exceeding R2,00 may be deducted until the cost incurred by the employer has been repaid, but in the event of the employee returning the scissors to his employer he shall be entitled to a refund of the total amount he has paid;
 - (f) deductions in respect of tea (or other beverage) in terms of clause 13 of this part of the Agreement;
 - (g) where no work is available to an employee on account of breakdown of machinery or other cause beyond the control of the management, the employer may make a pro rata deduction for any time lost in excess of two hours;
 - (h) deductions for contributions to trade union funds;
 - (i) deductions for cash advanced against wages;
 - (j) deductions in respect of repayments on housing loans provided for in clause 8 (4) of the Provident Fund Agreement of the Regional Chamber;
 - (k) where overalls have been provided by an employer to his employee at his request, a weekly installment not exceeding R2,00 may be deducted until the cost thereof has been repaid, but in the event of the employee leaving or absconding before the full cost of an overall has been paid, the outstanding amount may be deducted from his wages;
 - (l) deductions for contributions to pension funds approved by the Registrar of Pension Funds;
 - (m) deductions in respect of payments to local authorities for housing loans, rentals and rates;
 - (n) deductions from the wages of monthly-paid employees in respect of life insurance premiums;
 - (o) deductions in respect of clipcards for bus or train travel.
- (5) Employers who supply their employees with goods of any kind whatsoever, shall not deduct the amounts owing thereon from the wage of such employees. Wages must at all times be paid in full except as is provided for in subclause (4) and clause 12 and

H -26

no deduction shall be made in respect of goods that may have been accidentally spoiled during the manufacturing process.

- (6) Where work of any nature whatsoever is performed in an establishment by employees organised in sets or teams, each individual employee in the said sets or teams shall be paid his wage by the employer or his representative in the establishment where the work is performed.
- (7) No employer shall charge, nor shall he accept, any premium, monetary or other compensation 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.
- (8) Whenever work ceases or is interrupted in the whole or part of an establishment owing to damage caused by fire, storm or flooding, an employer shall pay all employees affected thereby wages up to a maximum of two weeks: Provided that such payment shall include any payment in respect of notice of termination of service which may be due in terms of clause 18 of this part of the Agreement; Provided further that where work in a part or the whole of the establishment is resumed within two weeks from the date on which work was so ceased or interrupted, the payment due shall be only in respect of the actual time lost by the employees affected.

The provisions of this subclause shall also apply to any employee who as at the date of such fire, storm or flood is employed on trial in terms of clause 18 (8) of this part of the Agreement.

- (9) Subclause (8) shall not apply to a casual employee.

6: TIME RECORDS

- (1) Every employer shall provide, to the satisfaction of the Regional Chamber, a semi-automatic time recording clock or other recording system and shall establish beyond reasonable doubt the actual time each individual employee has attended at the establishment.
- (2) Every employee shall, unless prevented by sickness or other unavoidable cause, register day by day the actual periods of his attendance at the establishment.
- (3) Every employee shall register in person, in accordance with the method employed in the establishment, and no employee may register for any other employee in such establishment.
- (4) All time cards or other types of records shall, in accordance with the requirements of section 205(1) and (2) of the Act, be kept for a period of three years subsequent to the date of the record and on request shall be available for inspection by the designated agent of the Council or Regional Chamber.

7: WAGE INCENTIVES, PIECE-WORK AND TASK-WORK

- (1) Task-work is prohibited and employees who are required to produce a given number of units of production shall be placed under a piece-work or incentive system as provided for in this clause.
- (2) No employer shall employ any employee on piece-work or any other form of wage incentive except in accordance with the following conditions:

- (a) No employee shall be paid in any week less than the minimum wage to which he would have been entitled in terms of clause 4 of this part of the Agreement if he had been employed purely as a time-worker.
- (b) The Regional Secretary of the Regional Chamber must within seven days of the introduction of any piece-work or other form of wage incentive be notified of the introduction thereof.
- (c) A schedule of the piece-work rates and, in the case of any other form of wage incentive, a statement clearly illustrating how bonus payments will be calculated, must forthwith be exhibited and kept posted in a conspicuous place readily accessible to the employees and such schedule and/or statement shall be signed in situ by a designated agent of the Council or Regional Chamber.
- (d) The employees affected by any wage incentive scheme other than straight piece-work shall have the right to elect a works committee of two (or such additional numbers as may be agreed to by the employer) and in the event of a works committee being appointed, full details of the actual operation of the scheme shall be made available to the committee.
- (e) Full details of the wage incentive scheme showing the operations covered, work values and allowances made in calculating work values, must be maintained by the employer, and where any changes are effected the record of the previous system must be retained for a period of one year after such change.
- (f) No details of the wage incentive scheme may be changed to reduce the earnings of the employees affected without the consent of the works committee (if any), and in the event of any dispute arising, the matter shall be referred to the Regional Chamber: Provided that this shall not apply to any changes effected during the trial period of three months after the coming into operation of the scheme.

Piece-work rates shall not be reduced without the consent of the Regional Chamber.
- (g) No wage incentive system may be continued for a period exceeding one month after a trial period of three months without a certificate of permission having been obtained from the Regional Chamber.

8: PROPORTION OR RATIO OF EMPLOYEES

- (1) Knitters - An employer shall not employ an unqualified knitter unless he has in his employ a qualified knitter and for each qualified knitter not more than three unqualified knitters shall be employed.
- (2) For the purposes of subclause (1), an employer who is wholly or mainly engaged in the work of a knitter may be deemed to be a qualified knitter: Provided that an employer may not be so deemed in more than one establishment.

9: ORDINARY HOURS OF WORK, MEAL INTERVALS AND REST INTERVALS

- (1) **Ordinary hours of work:** An employer shall not require or permit an employee to work more ordinary hours than -
 - (a) in the case of an employee, other than a normal shift worker or a twilight shift worker, boiler attendant, casual employee and watchman or caretaker -

H -28

- (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Monday to Friday, inclusive;
- (ii) eight and a half hours on any day between 07h30 and 18h00;
- (b) in the case of normal shift worker -
 - (i) 42½ hours, excluding meal intervals, but including rest intervals, in any week from Sunday to Saturday, inclusive;
 - (ii) nine hours on any day where two shifts are employed daily and eight hours on any day where three shifts are employed daily;

Provided that an employer may make mutual arrangements with his normal shift workers to work 42½ hours on night shift, excluding meal intervals but including rest intervals, in any week from Monday to Thursday (four-day week);

- (c) in the case of a boiler attendant, the weekly hours may be 46 and the daily hours nine and a quarter;
- (d) in the case of a watchman or caretaker, the weekly hours may be 60 and the daily hours 12 (five-day week) or 10 (six-day week);
- (e) in the case of casual employees, the weekly hours may be 25½ and the daily hours 8½;
- (f) In the case of a twilight shift worker, the daily hours may only be any time between 16h30 and 23h00 on any day from Monday to Friday.
- (2) **Hours of work to be consecutive:** All working hours in any day shall, except for meal intervals and rest intervals as provided for in this clause, be consecutive;
- (3) **Rest intervals:** An employer shall grant to each of his employees a rest interval of not less than -
 - (a) 15 minutes as near as practicable to the middle of each morning work period;
 - (b) 10 minutes as near as practicable to the middle of each afternoon work period;

Provided that this sub-clause shall not apply to a traveller's driver, a motor vehicle driver, a watchman or caretaker, or an employee engaged in delivering goods or messages outside the establishment of his employer: Provided further that where three normal shifts are employed daily or a twilight shift of longer than three hours duration is employed in an establishment, such rest intervals need not be granted to a normal or a twilight shift worker, provided he is supplied free of charge with one cup of tea as near as practicable to the middle of each normal or twilight shift, as the case may be, such tea to be taken while at his post.

- (4) **Meal intervals:** An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than one hour during which interval such employee shall not be required or permitted to perform any work: Provided that -
 - (a) periods of work interrupted by intervals of less than one hour shall be deemed to be continuous;

- (b) if such interval be for longer than one hour, the period in excess of one hour shall be deemed to be hours of work;
 - (c) where two or three shifts are employed daily in any establishment, a normal shift worker shall be granted two meal intervals of not less than 15 minutes per shift or one meal interval of not less than 30 minutes per shift during which intervals such employee shall not be required or permitted to perform any work;
 - (d) an employer may conclude an agreement with his employees, other than normal shift workers, to shorten such employees' meal intervals to not less than 30 minutes daily;
 - (e) this sub-clause shall not apply to a twilight shift worker.
- (5) **Savings:** The provisions of this clause shall not apply to travellers' drivers and watchmen or caretakers: Provided that, in the case of a watchman or caretaker, he shall not be required or permitted to work for more than six days consecutively without being granted a day off duty on full pay: Provided further, that the employer may, in lieu of granting his watchman or caretaker any such day off, pay the employee concerned the wage which he would have received if he had not worked on such day, plus an amount of not less than his daily wage in respect of such day not granted. The provisions of subclauses (2), (3) and (4) shall not apply to an employee engaged on emergency work or in the overhauling and repair of machinery which cannot be performed during the ordinary working hours.

(6) **Twilight Shift**

- (a) **General provisions:** Subject to the provisions contained in this part of the Agreement an employer may establish a twilight shift, the establishment and operation of which shall be subject to the following conditions:
 - (i) Only unemployed people may be recruited for working this shift.
 - (i) Notwithstanding the provisions of sub-clause 1 (a) above, supervisory and management staff from the existing staff complement of the employer's business may be employed on a twilight shift.
 - (ii) A twilight shift may only operate between the hours 16h30 to 23h00 daily from Monday to Friday.
- (b) **Employment conditions:** Staff employed on the twilight shift shall be subject to the following employment conditions:
 - (i) All provisions contained in this part of the Agreement, unless specifically excluded, shall be applicable to employees employed on a twilight shift.
 - (ii) The remuneration payable to a twilight shift worker shall accrue at an hourly rate.
 - (iii) A twilight shift worker shall not be entitled to the payment of a shift allowance.
- (c) **Transport arrangements:** The following conditions will apply to the transportation of employees working on a twilight shift:
 - (i) The cost of transport from the work place to the home of employees will be funded by the employer; and/or

H -30

- (ii) The employer will be responsible for the arrangements and expenses of transport from the work place to the homes of the employees at the conclusion of a twilight shift; Provided that where an employer and employee agree that the employee shall make the practical arrangements for transport home, this shall be permissible provided the employer shall still be responsible for the costs of such transport.

10: OVERTIME

- (1) **Overtime:** All time worked by employees other than normal shift workers and twilight shift workers -

- (a) in excess of the ordinary daily hours specified in clause 9(1); or
- (b) before 07:30 and after 18:00 from Monday to Friday, except in the case of boiler attendants, watchmen, caretakers, canteen employees or employees engaged in cleaning premises;

shall be deemed to be overtime.

- (c) **Shift workers:** All time worked by normal shift workers in excess of the ordinary daily or weekly hours specified in Clause 9(1)(b) shall be deemed to be overtime.
- (d) **Aggregation of Overtime:** For the purposes of determining the number of hours, or part thereof, which an employee should be paid at overtime rates, the hours worked outside the employee's normal working hours in terms of clause 9(1) of this part of the Agreement may be reduced by the number of hours or part thereof, in that pay week that the employee was absent.

Provided that no reduction of the overtime worked by an employee shall be made should the absence result from any of the following:

- (i) time not worked as a result of protected industrial/protest action;
- (ii) time not worked as a result of a public holiday as declared in terms of the Public Holidays Act;
- (iii) time not worked as a result of the employer having declared short time;
- (iv) time not worked as a result of the employee being on authorised shop steward stewards time off; and
- (v) time not worked as a result of any authorised absenteeism.

- (2) **Limitation of overtime -**

- (a) **Weekly and daily limits:** No employer shall require or permit an employee to work overtime for more than -
 - (i) 10 hours in any week;
 - (ii) three hours on any day.
- (b) **Notice of working of overtime to be given to employees:** No overtime in excess of one hour in any day may be required or permitted of an employee unless the employer -
 - (i) has given notice thereof to such employee the previous day; or

- (c) in the case of a watchman or caretaker, one and a half times his wage, divided by 60, for each hour or part of an hour so worked;
 - (d) in the case of a casual employee, one and a half times his daily wage, divided by 8½, for each hour or part of an hour so worked.
- (2) **Saturday work:**
- (a) No work shall be performed on any Saturday without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit;
 - (b) Subject to subclause (c) hereof, any time worked on a Saturday shall be deemed to be overtime and be paid for as follows:
 - (i) all work performed in excess of 4,25 hours or after 12:00 at a rate of double an employee's hourly wage for every hour or part of an hour so worked;
 - (ii) all other work in accordance with sub-clause (1).
 - (c) Where an employee is required or permitted to work on a Saturday, his employer shall pay the employee concerned a travelling allowance of not less than R1.75.
 - (d) The provisions of this subclause shall not apply to normal shift workers.
 - (e) A twilight shift worker may not be required to work on a Saturday.
 - (f) A twilight shift worker may not be required to work on a Sunday.
- (3) **Sunday work:** No work shall be performed on a Sunday without the permission of the Regional Chamber, and whenever an employee, other than a normal shift worker, is required or permitted to work on a Sunday, his employer shall either -
- (a) pay the employee -
 - (i) if he so works for a period not exceeding four hours, not less than the ordinary wage payable in respect of the period ordinarily worked by him on a week-day; or
 - (ii) if he so works for a period exceeding four hours, wages at a rate of not less than double his ordinary rate of pay, in respect of the total period worked on such Sunday, or the wage which is not less than double the ordinary wage payable in respect of the period ordinarily worked by him on a week-day, whichever is the greater; or
 - (b) pay the employee not less than one and a half times his ordinary hourly wage in respect of each hour worked on such Sunday and grant him within seven days of such Sunday, one work-day, i.e. a day other than a Saturday or Sunday, as a holiday, and pay him in respect thereof not less than eight and a half hours remuneration: Provided that for the purposes of this subclause, a piece worker shall be paid not less than the equivalent amount to which he would have been entitled had he been employed as a time-worker.
- (4) **Public holidays:**
- (a) Subject to the provisions in (b) and (c) below, an employee other than a casual employee, shall be entitled to leave on full pay in respect of the following public holidays, and where he is required or permitted to work on such holiday he shall be

H -33

paid in addition to his normal wage in respect of such holiday wages at straight time in respect of the hours so worked:

New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day and Day of Goodwill.

- (b) If the public holiday falls during the period of annual leave referred to in clause 15, his employer shall pay to him in respect of that public holiday an amount not less than one fifth of his ordinary weekly wage.
 - (c) Notwithstanding the provisions of this subclause, an employee who absents himself from work on any ordinary working day immediately preceding and/or immediately following any public holiday, shall not be paid for such public holiday unless such absence is on account of medically certificated sickness.
- (5) Remuneration payable in terms of any of the provisions of this clause shall be paid to the employee concerned not later than the pay-day next succeeding the period in respect of which such remuneration becomes payable.
 - (6) **Easter week-end:** No work shall be performed after 13h00 on the day immediately preceding Good Friday and the employees shall be granted the afternoon off as a paid half-holiday.

The employee shall receive for such afternoon full pay in respect of the hours normally worked on Thursday afternoons. Where work is performed on such paid half-holiday, the employee shall, in addition to payment for such half-holiday receive payment for time worked after 13h00 at overtime rates.

No employer shall require or permit his employees to work in time at ordinary rates of pay or at overtime rates in substitution for the morning work period of the day immediately preceding Good Friday.

This subclause shall not apply to a casual employee;

- (7) The provisions of subclause (3) shall *mutatis mutandis* apply to a normal shift worker who works on his day of rest;
- (8) Overtime shall apply to all employees in an establishment, except travellers' drivers.

12: SHORT-TIME

- (1) An employer shall, prior to the day on and from which he intends to work short-time, notify all employees concerned by posting up a notice, or notices, in a prominent position well known and easily accessible to employees in any section or department of the establishment concerned;
- (2) Any employee who has not been given notice in terms of subclause (1) shall, on attending at the establishment, be entitled to be employed for a full working day, or be paid full wages in lieu thereof;
- (3) An employee, who on any day attends at the establishment on the instructions of the employer or his representative shall be entitled to be employed for at least four hours on such day or to receive four hours' pay at his ordinary rate of pay in terms of clause 4(1) read with clause 4(9).
- (4) Consultation with the Trade Union shall take place prior to the introduction of short-time.

13: PROVISION OF TEA AND OTHER BEVERAGES

- (1) Where tea (or other beverage) is provided by the employer, a deduction of not more than one cent per cup may be made from the wages of the employees: Provided that the majority of employees in any establishment has agreed to accept tea (or other beverage).

Reference to "tea" in this subclause shall include the provision of milk and sugar for mixing with such tea (or other beverage).

- (2) Where tea or other beverage is not provided, the employer shall, at his own expense, provide and have immediately available to his employees at the commencement of each rest interval, and also at lunch time, a sufficient supply of boiling water and the necessary utensils for the making of tea.

14: CLOSED SHOP

- (1) No employer who is a member of an employers' organisation (which is a party to the Council), shall continue to employ an employee -
- (a) who, while being eligible for membership of the union, is not a member of the union as at the date of coming into operation of this part of the Agreement; or
 - (b) who does not become a member of the trade union within a period of 90 days from such date.
 - (c) The provisions of this clause shall apply to persons who are eligible for membership in terms of the constitution of the union or employers' organisation or who have been refused membership of or expelled from the union or employers' organisation.
- (2) Every employer shall forward all deductions made from the remuneration of employees in respect of union membership fees to the Secretary of the Regional Chamber within fourteen days of month-end in which the deductions fall due. The Regional Chamber shall forward the amounts to the Secretary of the union, together with such analyses of the amounts as are received from employers by not later than the end of the month in which the fees were received.
- (3) For this part of the Agreement no union membership subscriptions may be -
- (a) paid to a political party as an affiliation fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.
- (4) Provided that the provisions of this clause will not be applicable to:
- (a) clerks; or
 - (b) any employee to whom, in the opinion of the Regional Chamber, membership of the trade union has been refused without good and sufficient cause and the applicant has applied to the Council or Regional Chamber within 30 days of such refusal for exemption from the operation of this sub-clause; or
 - (c) an immigrant during the first five years after the date of his/her entry into the Republic of South Africa, provided that if any immigrant has at any time after the first 90 days of commencement of his/her employment in the Industry refused any invitation from the trade union to become a member of it, the provisions of this clause shall immediately come into operation; or

H -35

- (d) a casual employee.
- (5) Provided further that the provisions of section 26(3)(c) of the Act shall be observed by the parties to the Council and to whom this clause is applicable.

15: ANNUAL LEAVE AND PAID PUBLIC HOLIDAYS

- (1) **Annual leave:** Subject to the provisions of subclause (7), every employee shall between 15 December of each year and 14 January of the following year be granted at least three consecutive weeks' and one working day's annual leave and shall, in respect of such leave be paid as follows:
 - (a) no employee referred to in this subclause shall be paid less than three weeks' wages as annual leave pay-
 - (i) 13 ordinary working days leave and shall, in respect of such leave, be paid for 15 ordinary working days at full wage; plus
 - (ii) Christmas Day, Day of Goodwill and New Year's Day as paid public holidays in accordance with clause 11 (4) of this part of the Agreement published under Notice No. R. 627 of 28 May 1999; and
 - (iii) when Day of Reconciliation falls within the period of annual leave, it shall in accordance with clause 11 (4) of this part of the Agreement published under Notice No. R. 627 of 28 May 1999, also be observed as a paid public holiday thus extending the annual leave period by one day;
 - (b) in the case of an employee who on the date of closing of the establishment for the specified annual leave period, has not completed one year's continuous employment with his employer and whose employment has not been terminated -
 - (i) for each completed month of employment in that year an amount equal to one day's pay; plus
 - (ii) for any of the following public holidays falling within the period during which the establishment is closed for the annual holiday period - Day of Reconciliation, Christmas Day, Day of Goodwill and New Year's Day - the amount set out in clause 11 (4) in respect of each such holiday:

Provided that upon termination of employment an employee shall receive payment in lieu of leave calculated as follows :

One day's pay in respect of each completed month of employment calculated from 15 December of the previous year or from the date of engagement, whichever is the shorter period: Provided further that an employer shall not set off against such days of paid leave any days of paid leave granted such employee in excess of the number of day's paid leave he was required to pay the employee in terms of this subclause.

- (2) **Paid public holidays:**
 - (a) In addition to the paid public holidays normally falling within the period of annual leave, i.e. Christmas Day, Day of Goodwill and New Year's Day, each employee shall be entitled to and be granted leave on full pay on Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day and Day of Reconciliation subject to the provisions of clause 11 (4).

- (b) Where an employee's employment terminates immediately before any of the paid public holidays referred to in subclause (2) (a), he shall be entitled to payment for such public holidays, provided that they fall within an extended period calculated as follows :

One working day in respect of each completed month of employment (calculated from the day on which the employee last became entitled to leave or from date of engagement, whichever is the shorter period) shall be added to the date on which the employee's employment terminates, and if any paid public holiday falls within such added period it shall be paid for: Provided that

- (i) where the employment of an employee is terminated by his employer at any time during December of any year for reasons other than dismissal without notice for any good cause recognised by law as sufficient, as referred to in clause 18 (1) (a), such employee, shall be paid in accordance with the rate determined in clause 11 (4) in respect of each of the public holidays referred to in subclause (1) (a) which falls after the date of termination of employment;
- (ii) where an employee gives notice to his employer of his intention to terminate employment at any time during December of any year, such employee shall not be entitled to payment in respect of the paid public holidays referred to in subclause (1) (a) unless such paid public holidays fall within an extended period calculated in the manner set out herein;
- (c) Whenever an employee works on New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National women's Day, Heritage Day, Day of Reconciliation, Christmas Day or Day of Goodwill, his employer shall pay him not less than his ordinary hourly wage in respect of the total period worked on such day, or an amount equal to at least the wage payable to the employee in respect of the time (excluding overtime) ordinarily worked by the employee on that day of the week, whichever amount is the greater, in addition to the remuneration to which he would have been entitled had he not so worked.
- (d) In the event of a paid holiday falling upon a Sunday, it shall be observed the following day
- (e) In the event of any of the paid holidays referred to in subclause (1) (a) (ii) and in paragraph (a) hereof falling on Saturday, an employer shall pay his employee who does not work on such day five and a half hours' wage in addition to the remuneration which is due to him for time worked from the Monday to the Friday immediately preceding such Saturday;
- (f) Whenever an employee works on a paid holiday falling upon a Saturday, payment for any such day shall be in terms of paragraph (e) hereof, plus, in addition, one and a half times his hourly rate of wage for each hour worked on such Saturday;
- (3) **Payment for leave:** The employer shall pay his employee to whom leave is granted in terms of subclause (1) hereof, his pay in respect of leave not later than the last working day before the commencement of the said period and any amount paid to an employee in terms of subclause (1) or (2) shall be calculated at the rate of pay which the employee was receiving immediately prior to the date upon which the leave became due or his employment terminated, as the case may be; and whenever an employee is paid on a basis other than in accordance with the time actually worked by him, his ordinary rate of pay shall, for the purposes of this clause, be calculated as though he were paid by the hour and shall be ascertained at any date by dividing his

CONTINUES ON PAGE 642—PART 5



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette

No. 10167

Regulasiekoerant

Vol. 586

Pretoria, 14 April 2014

No. 37509

PART 5 OF 5

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

total wage during the three months immediately preceding that date, or during the total period of his employment by the employer concerned, whichever is the shorter, by the number of hours worked during the period in respect of which such wage was paid;

- (4) For the purposes of this clause, employment shall be deemed to commence from -
- (a) the date on which the employee entered the employer's service; or
 - (b) the date on which an employee who has, in accordance with the previous Agreement, been granted leave of absence on full pay, became entitled to such leave in terms of such Agreement, whichever may be the later;
- (5) Short-time shall not be deducted by an employer when computing the period of employment qualifying for annual leave in terms of subclause (1);
- (6) Where an employee has absented himself from work for any reason, other than that referred to in subclause (9), such period of absence shall not be considered as employment in terms of subclause (1);
- (7) **Annual leave at periods other than the specified leave period** - An employer may make mutual arrangements with his -
- (a) clerks, factory shop assistants, maintenance staff and watchmen or caretakers, to take their annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than three consecutive week's leave to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates;

(Maintenance staff means employees who are engaged in making repairs or adjustments to machinery or equipment, including the installation of such machinery or equipment, and who may effect cleaning, repairs or renovations to buildings, fixtures and fittings);
 - (b) employees engaged in making samples, to take not more than 10 days annual leave at a period other than between 15 December and the ensuing 14 January and in that event such employees shall be entitled to not less than two consecutive weeks leave or such lesser period of leave as might be due to the employees concerned, to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates: Provided that in the case of employees making samples, an employer shall be permitted to work 10 employees, or a minimum of 5 per cent of his labour force, whichever is the greater;
 - (c) shift workers engaged in knitting and finishing fabric to take their annual leave at a period other than between 15 December and the ensuing 14 January, and in that event such employees shall be entitled to not less than the leave due to them in terms of subclause (1), to be granted not later than within that period up to and including Good Friday of the year immediately succeeding the year of employment to which it relates: Provided that the employer shall notify the Council in writing of his intention to work shift employees during the leave period specified in subclause (1);
 - (d) employees, by agreement, to allow for two consecutive weeks' leave, inclusive of public holidays, to be taken in the period December to January each year, with the balance to be taken before the end of June of the following year: Provided that the terms of any such agreement reached by an

H -38

employer with his employees shall be referred to the Regional Chamber for record purposes.

(8) Leave and notice not to be concurrent:

- (a) Notice of termination of a contract of employment given by an employer shall-
 - (i) not be given during any period of leave to which the employee is entitled in terms of this part of the Agreement; and
 - (ii) not run concurrently with any period of leave to which the employee is entitled in terms of this part of the Agreement.
- (b) Nothing in this section affects the right -
 - (i) of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Act, or any other law; and
 - (ii) of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.
- (c) Payment instead of notice: Instead of giving an employee notice, an employer may pay the employee the remuneration the employee would have received, calculated in accordance with this part of the Agreement, if the employee had worked during the notice period.

(9) Any period during which an employee -

- (a) is on leave in terms of subclause (1); or
- (b) is absent on military service, not exceeding four months, undergone in that year, or
- (c) is absent from work on the instructions or at the request of the employer; or
- (d) is absent from work owing to illness or by reason of the fact that no female shall work in an establishment and no employer shall require or permit any female to work in his establishment during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after birth (if the child is stillborn or dies before the expiration of eight weeks after birth,

shall be deemed to be employment for the purposes of subclauses (1) and (2):

Provided that -

- (i) the provisions of paragraph (d) shall not apply in respect of any period of absence owing to illness of more than three consecutive days, if the employee, not being an employee referred to in proviso (ii), fails, after a request for such certificate by the employer, to submit to the employer a certificate by a medical practitioner that he was prevented by illness from doing his work, or in respect of that part of any total period of absence during any 12 months of employment which is in excess of 30 days;
- (ii) an employee whose employer is required in terms of any Act of Parliament to provide for the care and treatment of such employee when sick or injured, shall not be required to submit a certificate by a

medical practitioner in respect of any period of absence referred to in proviso (i);

- (10) **Advance notice of annual leave period:** At least one calendar month's notice of the actual date of the end of the year leave period shall be given by the employer by exhibition of an appropriate notice in the factory in a conspicuous place readily accessible to his employees;
- (11) **Extension of annual leave period:** An employer shall not be entitled to extend the period of annual leave referred to in subclause (1) without the prior permission of the Regional Chamber which may impose such conditions as it may deem fit.
- (12) This clause shall not apply to a casual employee.

16: ENGAGEMENTS, TERMINATIONS, ABSENCES FROM WORK AND TRANSFERS IN OCCUPATION

- (1) **Service record cards to be produced on engagement:**
 - (a) Subject to the provisions of subclause (7), an employer shall, before engaging an applicant for work, require an applicant to produce a service record card issued by the Regional Chamber in the form and manner specified by the Regional Chamber.

In addition to issuing a service record card the Regional Chamber shall issue a certificate of service reflecting the employee's employment history.
 - (b) The employer shall forthwith upon engagement enter in the space provided for "subsequent experience" the name of his factory, the date of engagement, occupation and wage on engagement and shall retain the card in safe-keeping so that it can in due course be dealt with in terms of subclause (2) upon termination of service of the employee.
 - (c) No employer shall engage any employee who is in terms of this part of the Agreement entitled to possess a service record card unless such employee has produced to the employer such service record card issued by the Regional Chamber.
 - (d) No employer shall engage any employee who is in terms of this part of the Agreement entitled to possess a Health Care Fund card unless such employee has produced to the employer such membership card issued by the Clothing Industry Health Care Fund in proof of membership of that Fund by such employee.
 - (e) The employer shall forthwith upon engagement of such employee enter in the space provided on such card the name of the factory and the date of engagement, and shall immediately thereafter hand the card back to the employee.
 - (f) Upon termination of such employee's services the employee shall on the day such termination takes place produce to the employer the said membership card issued by the Health Care Fund and the employer shall in the space provided enter the date of termination and shall initial such date in the space provided.
 - (g) If the service record card shows that the employee is re-entering the Industry after confinement, the employer shall not permit the employee to commence work until a post-natal examination certificate has been produced in terms of subclause (7).

- (2) **Service record card to be returned to employee on termination of service or retained if on maternity leave:** Upon termination of service of an employee, the employer shall complete the remaining details on the employee's service record card, i.e. date of leaving, wage at date of leaving and length of employment. The completed card shall thereafter be initialed and handed to the employee on termination of service.

If the employee is ceasing employment due to confinement, this shall be endorsed on the card by the words "Due to Confinement" being written on the line on which the "Date of Leaving" is recorded.

If the employee is proceeding on maternity leave, the words "Maternity leave" and the date from which the employee proceeds on maternity leave must be written on the card on the line on which the "Date of Leaving" is recorded and the card retained by the employer.

- (3) **Procedure when employee does not produce a service record card:** The employer shall forthwith upon engagement cause an application in the form and manner specified by the Regional Chamber, including a Provident Fund nomination of beneficiary form, to be completed by the prospective employee and shall attach same to the weekly return of engagements referred to in subclause (4).
- (4) **Weekly returns of engagements, terminations, absences from work and transfers in occupation:** Not later than on Friday of each week the employer shall complete and transmit to the Regional Chamber a record, in the form and manner specified by the Regional Chamber, of all engagements, terminations, the first or last dates of absences from work for four or more consecutive pay weeks and transfers in occupation of employees in respect of that week: Provided that where in any week no changes have been effected, a "Nil" return shall be submitted.
- (5) **Dependants to be registered:** Every employer shall, when the Minister declares this part of the Agreement binding and thereafter at the engagement of each employee, determine if an employee has dependants and ensure that such dependants are registered with the Health Care Fund, and every employer shall, if an employee's dependants have not previously been registered with the Health Care Fund, inform the Regional Chamber of the Dependants of each of his employees within five days of the end of each calendar month in the form and manner specified by the Regional Chamber. In the event of no dependants having to be registered in respect of the calendar month, a 'Nil' return shall be submitted.

An employee who can prove to the satisfaction of his employer that his dependants are covered by a registered medical aid scheme need not register his dependants with the Health Care Fund. Proof of such medical aid scheme membership must be available for inspection purposes.

An employer shall forward the service record card of each employee with dependants to Regional Chamber to enable the Regional Chamber to record the fact that an employee has dependants on such card unless the employee's card already reflects such information.

- (6) **Notice of termination of service to be given in writing by employer or employee:**
- (a) An employer shall, when giving notice of his intention to terminate an employee's employment, give his employee written notice in the form and manner specified by the Regional Chamber.
- (b) An employee shall, when giving notice of his intention to terminate his employment, give his employer written notice in the form and manner specified by the Regional Chamber.

- (7) **Procedure where employee proceeds on maternity leave or leaves employment due to confinement and on re-employment thereafter:**
- (a) Where an employee resigns when proceeding on maternity leave, this fact must be recorded on her service record card as provided for in subclause (2) above.
 - (b) Where an employee leaves work due to confinement, the employer must still record the date of ceasing work due to confinement.
 - (c) Not later than on the date of such termination or ceasing of work or commencement of maternity leave as the case may be, the employer shall provide the employee with a blank "post-natal examination certificate", and neither the same employer nor any new employer shall permit the employee to recommence employment or to start fresh employment unless the employee produces a properly completed "post-natal examination certificate" of her fitness for employment.
 - (d) Where such certificate shows that the employee requires further treatment, the Secretary of the Health Care Fund must be notified thereof and the certificate forwarded to him by registered post.
 - (e) Supplies of the blank "post-natal examination certificates" may be obtained from the Secretary of the Fund.
- (8) **Procedure where an employee withdraws notice:** An employee may only withdraw notice of his intention to terminate his contract of employment within two (2) working days of having tendered such notice and the employer shall require the employee concerned to acknowledge and confirm such withdrawal in the form and manner specified by the Regional Chamber.
- (9) **Duplicate service record cards:** Duplicate service record cards may be issued by the Regional Chamber upon the payment of an amount determined by the Regional Chamber from time to time.
- (10) This clause shall not apply to a casual employee.

17: RECORD CARDS AND AGREEMENT

- (1) **Record cards:** Every employer shall maintain a record card in respect of each of his employees, other than casual employees, showing the following particulars:
- (a) Factory number of employee;
 - (b) name;
 - (c) sex;
 - (d) address;
 - (e) age;
 - (f) occupation;
 - (g) starting date;
 - (h) previous experience;
 - (i) number of service record card;
 - (j) commencing wage;
 - (k) increments and dates;
 - (l) transfers in occupation and dates.
- (2) **Exhibition of Agreement:** Every employer shall affix and keep affixed in his establishment in a conspicuous place readily accessible to his employees, in the form prescribed in the regulations under the Act, a legible copy of this part of the

H -42

Agreement in at least two official languages: Provided further that every employer on whom the collective agreement, arbitration award, or determination is binding must -

- (a) keep a copy of that collective agreement, arbitration award or determination available in the workplace at all times;
 - (b) make that copy available for inspection by any employee; and
 - (c) give a copy of that collective agreement, arbitration award or determination -
 - (i) to an employee who has paid the prescribed fee; and
 - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.
- (3) **Administration of Agreement:** The Regional Chamber shall be the body responsible for the administration of this part of the Agreement, and may issue expressions of opinion not inconsistent with its provisions for the guidance of employers and employees.

18: TERMINATION OF EMPLOYMENT

- (1) **Period of notice:** Subject to -
- (a) the right of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law as sufficient;
 - (b) the provisions of any written agreement between the employer and his employees which provides for a period of notice of equal duration on both sides and for longer than one week or one month, as the case may be;
 - (c) the provisions of subclause (8);
- an employer and his employee shall, in the case of a weekly paid employee, give not less than one week's notice and in the case of a monthly-paid employee, not less than one month's notice, of his intention to terminate the contract of employment.
- (2) **Payment or forfeiture in lieu of notice:** In the event of an employer or an employee failing to give notice as provided for in subclause (1), an employer shall pay the employee or the employee shall pay and/or forfeit to the employer:
- (a) in the case of a weekly-paid employee, one week's wages;
 - (b) in the case of a monthly-paid employee, one month's wages;

calculated at the rate of pay which such employee was receiving immediately before the date of such termination.

In the above regard absence from work without prior permission for a period of six consecutive days shall constitute a termination of the contract of employment unless within six days the employee has furnished to this employer a medical certificate certifying his inability to perform his/her usual work, in which case the employer shall, within three days of receipt of such certificate, advise the employee that it will keep his/her employment open until the employee is able to work or tender to such employee written notice of termination of service. Any employer who fails to keep the employee's employment open or to tender notice within such three days shall be required to pay the employee in lieu of such notice: Provided that where an employee has submitted a medical certificate to his employer and subsequently returns to resume service and his employer elects to summarily terminate his

employment, his date of termination shall be the date of summary termination and not the date on which he last worked.

For the purpose of this sub-clause, where an employee attends work on a Friday, the period of absence from work shall commence from the next succeeding Monday, i.e. the intervening Saturday and Sunday shall be ignored in calculating the six consecutive calendar days' period of absence.

Nothing contained in this subclause shall in any way limit the rights and protection afforded to employees in terms of Chapter VIII of the Act.

- (3) Notwithstanding anything to the contrary in this part of the Agreement, should any money owing by an employer to an employee by way of wages be insufficient to meet the full amount of forfeiture referred to in subclause (2), the employer shall be entitled to retain such amount from other benefits (if any) which were in the process of accrual to such employee at the time of termination of his contract of employment.

For the purposes of this subclause, any payment which may be due to an employee in terms of clause 15 (1), (2) and (3) of this part of the Agreement shall also be regarded as a benefit in the process of accrual.

- (4) When an agreement is entered into in terms of subclause (1), the payment or forfeiture in lieu of notice shall be proportionate to the period of notice agreed upon.

- (5) **Date of coming into operation of notice to terminate employment:**

(a) **Weekly paid employees:** Notice shall be given on any working day and shall operate from the following day.

(b) **Monthly-paid employees:** Notice shall be given at any time prior to the usual closing time of the establishment on the last working day of the calendar month and shall operate from the first day of the succeeding month.

- (6) For the purposes of this clause, a week's notice shall mean a working week of not more than the number of hours ordinarily worked by the employee, or a full week's pay in lieu thereof, and the same proviso shall apply to the period of notice specified or mutually agreed upon in terms of subclause (4).

- (7) Where short-time is worked in an establishment, notice to terminate employment shall be in terms of (a) and (b) hereof :

(a) An employee may terminate his contract of employment by giving his employer notice equivalent to the number of days worked in the week preceding the notice week; and

(b) an employer working short-time shall give like notice to an employee to terminate his contract of employment.

- (8) **Trial periods:**

(a) **Weekly employees** - The provisions of this clause shall not apply during the first four weeks of employment. Such four weeks shall be deemed to be period of trial during which the employment may be terminated by the employer or the employee on 24 hours' notice.

(b) **Monthly employees** - The provisions of this clause shall not apply during the first six weeks of employment. Such six weeks shall be deemed to be a period of trail during which the employment may be terminated by the employer or the employee on 24 hours' notice.

- (9) This clause shall not apply to a casual employee.

19: EXEMPTIONS

A. For any business entity registered with and falling within the Council's registered scope inasmuch as it relates to the scope of this part of the Agreement

- (1) Any business entity, whether a party or a non-party to the Council, which is registered with and falls within the Council's registered scope for the purposes of this part of the Agreement may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption shall be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption shall be motivated in accordance with the exemption criteria set out in subclause (7) below; shall be supported by relevant documentation and, in addition, shall contain the following information:
- (a) The period for which the exemption is sought;
 - (b) the number of employees affected and how many of such employees are members of a registered trade union;
 - (c) the clauses and subclauses of this part of the Agreement from which the exemption is sought;
 - (d) satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, which consultations shall include a registered party trade union, where such union has members employed at the workplace, and shall include the response resulting from such consultations; and
 - (e) the demonstrable commercial need of the applicant for the exemption sought.
- (4) (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other officer designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.
- (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in subclause (7) below, within 45 days from the date of lodgment of the application with the General Secretary, failing which the application shall be deemed to have been refused.
- (c) The Exemptions Committee may call for any further information or submissions it deems appropriate from the applicant, prior to making a decision. The time period stipulated in subclause (b) above may be extended by agreement between the applicant and the Committee by the period the applicant takes to furnish the additional information or submissions.
- (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, grant, partially grant, or reject such application for exemption, and may impose any conditions on the granting or partial granting of any application it deems fit under the circumstances. If the applicant is not prepared to accept a partial granting of the application or any

conditions imposed by the Exemptions Committee, the application shall be deemed to have been rejected.

- (e) Subject to the time period for considering the application referred to in subclause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been rejected and the reasoning of the members of the Exemptions Committee who wish to reject the application shall constitute the reasons of the Committee for the purposes of subclause 4 (i) below.
 - (f) The Exemptions Committee shall notify the applicant of its decision within seven days of such decision having been reached.
 - (g) If the application has been granted or partially granted, the Exemptions Committee 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 exemption(s) will be valid
 - (iii) the clauses or subclauses of this part of the Agreement in respect of which exemption was granted or partially granted; and
 - (iv) the full name of the exempt employer or employee(s).
 - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter.
 - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in subclause (5) below since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application may be referred on appeal to the Independent Exemptions Body (Exemptions Board) hereby established in terms of the Act and the constitution of the Council. Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.
- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such a fee shall be consistent with-
 - (i) the cost incurred for the hearing of the appeal;
 - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
 - (c) The Exemptions Board shall, in addition, have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do so on the basis that the appeal is so completely without merit that it would be justified in doing so.

H -46

- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose.
- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal.
- (c) The provisions of subclause (4) above, shall read with the changes required by the context, apply equally to the appeal process.
- (d) The decision of the Exemptions Board shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee and, where applicable, the Exemptions Board of the following:
- (a) There is a demonstrable commercial need for the exemption.
- (b) Competitors covered by the Council who are in compliance with the applicable Council agreements will not be materially prejudiced by the exemption.
- (c) No infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted, nor will the application, if granted, result in a conflict with the primary objectives of the Act.
- (d) The exemption will not undermine collective bargaining and labour peace in the industry.
- (e) There has been compliance with subclause (3) above.
- (f) The majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies. In such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the following criteria shall be taken into account by the Exemptions Committee and the Exemptions Board when determining applications for exemptions:
- (a) The merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has made a compelling case for the exemption.
- (b) Whether the applicant firm will constitute a viable concern after the expiry of the exemption.
- (c) If the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee., transferability, administration, management, costs, growth and stability.
- (d) The terms of the exemption sought, including the period thereof.
- (e) Any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard.
- (f) The history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether

- or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements.
- (g) Any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council.
 - (h) Any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances.
 - (i) The cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose.
 - (j) What cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour.
 - (k) What hardship may eventuate to employees in the event of the exemption being granted.
 - (l) Any relevant time limits contained in the Council's constitution and the Act, and in particular that any exemption or partial granting of an exemption shall be for a fixed, stipulated period.
 - (m) Any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant shall be entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Regional Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in subclause (7) above.
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of subclause (4) above, read with the changes required by the context.
- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement, in the case of Embroidery Employers.

20: SEATING ACCOMMODATION

Seats with suitable back rests, approved of by the Regional Chamber, shall be provided for all female employees.

21: TOOLS AND MATERIALS

The employer shall, free of charge, supply to the employees all tools (other than scissors), materials and requisites for the manufacture of clothing.

22: EXPENSES OF THE COUNCIL AND REGIONAL CHAMBER

- (1) The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.

H -48

- (2) (a) For the purpose of meeting the expenses of the Council and Regional Chamber, every employer shall deduct from the earnings of each of his employees for whom minimum wages are prescribed in clause 4 of this part of the Agreement, an amount equal to 0.22% of each employee's wages per week, calculated at the qualified machinist's rate of pay, payable by means of a deduction from the employee's wages maximum of R1,97 per week.
- (b) To the amount so deducted, the employer shall add an amount equal to 0.32% of each employee's wages per week, calculated at the qualified machinist's rate of pay, payable by the employer maximum of R3,17 per week and forward, month by month, and not later than the 14th day of each month, the total sum to the Regional Secretary of the Regional Chamber.
- (3) (a) Every employer shall make a return to the Regional Chamber of the number of employees employed by him for each week of each calendar month in the form and manner specified and supplied by the Regional Chamber.
- (b) Should any amount due in terms of this clause not be received by the Regional Chamber 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 Regional Chamber 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 Regional Chamber: Provided that the Regional Chamber 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 or Regional Chamber 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 pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.
- (4) This clause shall not apply to a casual employee.

23: TRADE UNION REPRESENTATIVES ON THE REGIONAL CHAMBER

Every employer shall give to any of his employees who are representatives on the Council every reasonable facility to attend to their duties in connection with the work of the Council or Regional Chamber: Provided that in establishments employing 5 or fewer employees, the trade union shall give the employer 5 days' written notice of its request for time off for its representative in terms of this clause.

24 : POWERS OF DESIGNATED AGENTS WHEN ATTEMPTING TO RESOLVE DISPUTES AND SECURE COMPLIANCE OF AND IN TERMS OF THIS PART OF THE AGREEMENT

- (1) One or more persons shall be appointed by the Council or Regional Chamber as agents to assist in enforcing the terms of the Council's or Regional Chamber'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 or Regional Chamber.

- (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 part of the Agreement in terms of clause 36 or the Disputes Procedure in terms of clause 37 of this part of the 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 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) shall be signed by a designated agent and shall -
- (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;

H -50

- (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 General Secretary of the Council or Regional Secretary of the Regional Chamber.
- (7) The owner or occupier of any premises that an agent and/or any other appointed person 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 agent and/or appointed person 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 agent and/or appointed person must pay the witness fee specified from time to time in terms of Section 208 of the Act to each person who appears before him in response to a subpoena issued, where such fee has been specified by the Minister of Labour or, in the absence of a fee being specified by the Minister, 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 agent and/or appointed person;
 - (c) by refusing to take the oath or to make an affirmation as a witness when an agent and/or appointed person 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 an agent and/or appointed person;
 - (f) if the person willfully hinders an agent and/or appointed person in performing any function conferred by or in terms of this Act;
 - (g) if the person insults, disparages or belittles an agent and/or appointed person, or prejudices or improperly influences an investigation or improperly anticipates the agent and/or appointed person's recommendations;
 - (h) by willfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings
 - (i) by doing anything else in relation to the agent and/or appointed person 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 or Regional Chamber refer any contempt to the Labour Court for an appropriate order.

25: OUTWORK AND DISCLOSURE OF EMPLOYERS' PATTERNS ETC.

- (1) Every employer giving out work on contract shall at all times keep a record showing:
- (a) the name and address of the person to whom the work has been given out;
 - (b) a description of the type and quantity of work given out; and
 - (c) the dates upon which the work was given out and the dates upon which it was received back.

For the purposes of this subclause, 'giving out work' shall include the issue of materials for the purpose of having such materials made up into garments or parts of garments.

- (2) Every employer shall retain such record for a period of three years subsequent to the occurrence of that event and shall, on demand by a designated agent of the Council or Regional Chamber made at any time during the said period of three years, produce the said record for inspection.
- (3) Every employer shall within 14 days of the end of each quarter (i.e. for the periods ending 31 March, 30 June, 30 September and 31 December) forward a return of outwork to the Regional Chamber in the form and manner specified by the Regional Chamber.
- (4) No employee in the employ of an employer shall disclose to any other employer or person any cutting patterns or templates used by his employer.
- (5) No employer shall induce any employee of another employer to disclose any cutting patterns or templates used by such employee's employer.

26: CLOTHING INDUSTRY HEALTH CARE FUND

- (1) The Fund established under Government Notice No 43 of 9 January 1948, and known as the "Clothing Industry Health Care Fund" (formerly the "Cape Clothing Industry Sick Fund" and "Cape Clothing Industry Sick Benefit Fund") and hereinafter referred to as the "Fund" is hereby continued.
- (2) The administration of the Fund shall be vested in a Management Committee which shall be appointed at a duly constituted meeting of the Regional Chamber, in terms of the Council's Constitution, and shall consist of six employers' representatives and six employee representatives, with the Chairman and the Vice-Chairman of the Regional Chamber, as *ex officio* members. A paid secretary, who shall also be the Secretary of the Fund, shall be appointed by the Committee.
- (3) One copy of this Collective Agreement, Clause 26 of which shall represent the Rules of the said Fund, and any amendments thereof, shall be kept by the General Secretary of the Council and Regional Secretary of the Regional Chamber.
- (4) (a) The purpose of the Fund is to provide medical and related benefits for employees and their dependants and for such purpose every employer shall each week deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement and who has worked irrespective of the time so worked (hereinafter referred to as a 'contributor'), the following amount:

H -52

Group 1 In the case of a contributor earning R3,00 per week or less in excess of the wage rate specified for a Qualified Grade B employee in clause 4 (1) (a) of this Part of the Agreement:

without dependants: R 24,78
with dependants: R 29,48

Group 2 In the case of a contributor earning R3,01 per week and more in excess of the wage specified for a Qualified Grade B employee in clause 4 (1) (a) of this Part of the Agreement:

without dependants: R 26,78
with dependants: R 33,48

- (b) An employer shall, in respect of each contributor from whose wages deductions are made in terms of paragraph (a) above, contribute per week the amounts set out below:

Group 1 In the case of a contributor earning R3,00 per week or less in excess of the wage rate specified for a Qualified Grade B employee in clause 4 (1) (a) of this Part of the Agreement: R8,19;

Group 2 In the case of a contributor earning R3,01 per week and more in excess of the wage specified for a Qualified Grade B employee in clause 4 (1) (a) of this Part of the Agreement: R9,77.

- (c) (i) The total sum representing the employer's contributions and the contributor's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.
- (ii) Should any amount due in terms of this clause not be received by the Regional Chamber 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 Regional Chamber from time to time, calculated from the first day of the month in which the payment is due until the day upon which payment is actually received by the Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.
- (iii) In the event of the Council or Regional Chamber 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 pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.
- (d) Upon receipt of the first eight payments to the Fund in respect of each contributor, the Secretary of the Fund shall allocate a Fund number to each contributor and prepare a membership card reflecting:
- (i) the full name of the employer;
- (ii) the full name of the contributor;

- (iii) the Fund number of the contributor.

The Secretary of the Fund shall thereafter either notify the contributor to call and the card shall be handed to the contributor after the contributor has signed the card in the presence of an official of the fund, or transmit the card to the employer to hand it to the contributor, in which event it shall be the duty of such employer to ensure that the contributor signs the card immediately on receipt thereof and furnishes a receipt thereof which the employer shall, thereafter, transmit to the secretary of the Fund within seven days.

- (e) All the moneys received by the Fund shall be deposited in a banking account for the Fund which shall be opened by the Regional Chamber, in the name of the "Clothing Industry Health Care Fund": Provided that the Management Committee may from time to time authorise investments of funds in terms of the Act.
- (f) The Management Committee shall appoint an auditor for the Fund, who shall be a registered accountant, and determine his remuneration, which shall be paid out of the Fund. The accounts of the Fund shall be audited annually for the 12 months ending 31 December each year from the year commencing 1 January 2003. A copy of the audited financial statements, approved by the Management Committee, shall be signed by the Chairperson of the Management Committee and the Regional Secretary of the Regional Chamber, and a copy provided to the General Secretary of the Council who shall transmit a copy to the Registrar: Labour.
- (g) Disbursements from the fund shall cease whenever the amount to the credit of the Fund falls below R50 000.
- (h) The employer shall each week notify the Fund of all contributors who have been absent without pay for four or more consecutive pay-weeks in the manner specified in clause 16(4) of this part of the Agreement.
- (5) (a) The contributor shall be liable for any benefits paid to him or obtained by him as a result of his misrepresentation of the facts or as a result of an error in the calculation of such benefits, and the Management Committee may set off the incorrect amount paid to the contributor against any further benefits due to him or recover the amount from the contributor.
- (b) If a contributor leaves his employment in the Industry for the purpose of taking employment outside the Industry, he shall forfeit all claims to the Fund.
- (c) Maternity benefits:
- (i) Subject to the provisions of this part of the Agreement a female contributor who-
- (aa) has continuously contributed to the Health Care Fund for no less than one year; and
- (ab) has continuously been employed in the Industry for no less than one year;
- as at the date of ceasing employment because of her pregnancy shall be entitled to the maternity benefits set out in (iii) below. Female contributors entitled to maternity benefits shall include the following:
- (A) A female contributor who becomes unemployed through no fault of her own because of retrenchment or closure or liquidation of her employer's establishment, regardless of the

H -54

- stage of her pregnancy at the time of becoming unemployed;
and
- (B) a female contributor who resigns, subject to her pregnancy, at date of resignation, being 22 weeks or more.
- (ii) For the purposes of this subclause, non-contributing periods owing to illness and/or short time shall be deemed to be periods of contribution.
- (iii) Any employee who is entitled to maternity benefits shall receive a lump sum payment equal to 25 per cent of such employee's weekly wage earned at the time of ceasing employment because of her pregnancy, multiplied by 13: Provided that no such payment shall be made to the employee-
- (aa) earlier than four weeks prior to the expected date of her confinement; which expected date shall be determined by a recent medical certificate signed by a medical practitioner indicating the number of weeks' pregnancy and the expected date of confinement;
or
- (ab) in the event of a prematurely born child which is alive at birth, unless she produces a birth certificate; or
- (ac) in respect of a miscarriage, abortion or still-born child that occurs during the first 35 weeks of pregnancy; or
- (ad) if the employee dies prior to claiming the benefit due to her in terms of this subclause, until such time as the Master of the High Court has decided to whom such benefit should be paid.
- (6) All contributors from whose wages eight or more consecutive weekly deductions have been made in terms of subclause (4) (a) shall be entitled to the following benefits:
- (a) the services of a medical officer appointed by the Fund;
- (b) consultations with specialists appointed by the Fund;
- (c) free medicines prescribed and dispensed by the medical officers or specialists appointed by the Fund;
- (d) the benefits provided for in subclause (7), (8) and (9).
- (e) medical and related benefits as determined by the Management Committee, for their registered dependants.

The benefits provided for in this subclause shall cease eight weeks after the date of termination as a contributor in the Industry.

The cost of medical attention or pharmaceutical supplies rendered or dispensed by medical officers appointed by the Management Committee in respect of a contributor shall be paid by the Fund which shall also pay the cost of operating the Assisted Optical Scheme referred to in subclause (8) and the dental surgeries referred to in subclause (9).

Such costs shall be payable in respect of a period not exceeding three weeks in any cycle of one calendar year and shall be subject to such further conditions as may from time to time be decided by the Management Committee.

Where a contributor withdraws the money standing to his credit from the Cape Clothing Industry Provident Fund, and provided such payment is made due to the employee leaving the Industry as a result of serious ill health or incapacity prior to reaching the age for retirement from the Cape Clothing Industry Provident Fund, such employee shall be entitled to free medical treatment from any one of the Fund's medical officers and free medicines supplied by such medical officer during the period of 26 weeks calculated from the date on which such employee leaves the Industry.

Pregnancy shall not be regarded as an 'illness' for the purpose of benefits and only one visit to the doctor shall be allowed at the expense of the Fund.

- (7) **Gynaecological clinics:** Reasonable facilities shall be afforded to employees to attend the Health Care Fund clinic and upon production of a certificate from the Health Care Fund sister that an appointment has been made, the employer shall pay for time lost by the employee in attending the clinic up to a maximum of two hours in any week.
- (8) **Optical clinic:** The Fund shall provide and equip an optical clinic where employees may be tested by means of an Ortho-rater or similar machine. Where such test shows that further attention is needed, the Fund shall, in consultation with the employer, arrange an appointment with an ophthalmologist and the employee shall be notified of such appointment. The employer shall pay for the time lost by the employee in attending the clinic and for the purpose of keeping the appointment with the ophthalmologist, up to a maximum of two hours in any week. Before an appointment is made with such specialist on behalf of an employee, the employee shall lodge with the Health Care Fund such amount as may from time to time be determined by the Management Committee as being the employee's contribution towards the cost of spectacles. Such contribution shall be in respect of standard type frames, as approved by the Management Committee. Where a more expensive frame is desired, the additional costs involved shall be borne by the employee.
- (9) **Dental surgeries:**
- (a) The Fund shall provide and equip one or more dental surgeries for the benefit of contributors.
- (b) A contributor shall pay not more than the following percentages of the charge submitted by a dental technician for dentures, partial dentures or repairs to dentures which have been prescribed by the Fund's dental surgeon:
- (i) contributors who have completed 10 years membership of the Fund: 60 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
- (ii) contributors who have completed five years' membership of the Fund: 80 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures;
- (iii) contributors who have completed less than five years' membership of the Fund: 100 per cent of the dental technician's charge for dentures, partial dentures or repairs to dentures.
- (c) The Management Committee may determine the contributor's payment towards the cost of any other dental treatment: Provided that no contributor shall be required to pay towards the cost of the treatment of dental caries or X-rays taken, as prescribed by the Fund's dental surgeon.
- (d) The Fund shall, in consultation with a contributor, arrange an appointment with the dental surgeon for treatment and the employer shall be notified of the appointment. The employer shall pay the contributor for time lost by the

contributor in attending the dental surgery for the purpose of keeping such appointment, up to a maximum of two hours in any week.

- (10) In the event of the expiration of this part of the Agreement by effluxion of time or cessation for any other cause, the Fund shall continue to be administered by the Management Committee until it be either liquidated or transferred by the Council or Regional Chamber to any other fund constituted for the same purpose as that for which the original Fund was created: Provided that the Fund shall be liquidated by a person appointed by the Council or Regional Chamber unless an Agreement providing for the continuation of the Fund or for the transfer of its moneys as aforesaid is entered into within 12 months of date of expiration of this part of the Agreement.
- (11) In the event of dissolution of the Council or Regional Chamber, or in the event of its ceasing to function during any period in which this part of the Agreement is binding in terms of the Act, the Management Committee shall continue to administer the Fund and the members of the Management Committee existing at the date on which the Council or Regional Chamber, as the case may be, ceases to function or is dissolved shall be deemed to be members thereof for such purpose: Provided, however that any vacancy occurring on the Management Committee may be filled by the Registrar from employers or employees in the Industry, as the case may be, so as to ensure an equality of employer and employee representatives and of alternates in the membership of the Management Committee. In the event of such Management Committee being unable or unwilling to discharge its duties or a deadlock arising thereon which renders the administration of the Fund impracticable or undesirable in the opinion of the Registrar, he may appoint a trustee or trustees to carry out the duties of the Management Committee and who shall possess all the powers of the Management Committee for such purpose.

In the event of there being no Council or Regional Chamber in existence, the Fund shall be liquidated upon the expiration of this part of the Agreement in the manner set forth in subclause (12), and if upon the expiration of the Agreement the affairs of the Council or Regional Chamber, as the case may be, have already been wound up and its assets distributed, the balance of the Fund shall be distributed as provided for in Section 59(5) of the Act and the Council's Constitution as if it formed part of the general funds of the Council.

- (12) Upon liquidation of the Fund in terms of subclause (10), 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 general funds of the Council or Regional Chamber.
- (13) (a) An employer shall grant an employee who is absent from work through incapacity:
- (i) in the case of an employee who regularly works not more than five days a week, not less than 10 working days; or
 - (ii) in the case of any other employee, not less than 12 working days;

sick leave in the aggregate on full pay during each period of 12 consecutive months commencing 1 July 1997 and on each July 1st thereafter, for which the employee is employed by him (hereinafter referred to as the 'sick leave cycle');

Provided that during the first 12 consecutive months of employment an employee shall not be entitled to sick leave on full pay at a rate of more than, in the case of an employee who regularly works not more than five days in a week, one working day in respect of each completed period of five weeks of employment and, in the case of any other employee, one working day in

respect of each completed month of employment. The sick leave cycle of such employees shall commence on the next July 1st so as to ensure a common Industry Anniversary date of 1 July for sick leave.

- (b) The amount to be paid in terms of paragraph (a) to an employee in respect of a day's sick leave on full pay shall not be less than the wage payable to him in respect of the time (excluding overtime) ordinarily worked by him on that day of the week.
- (c) An employer shall not be bound in terms of paragraph (a) to pay to an employee an amount in respect of any absence from work for a period covering more than two consecutive days, unless the employee produces a certificate signed by a medical practitioner stating the nature and duration of the employee's incapacity:

Provided that if an employee has during any period of up to eight weeks received payment in terms of paragraph (a) on two or more occasions without having produced such a certificate to his employer, his employer shall during the period of eight weeks immediately succeeding the last such occasion not be bound to pay the said amount to the employee in respect of any absence from work, unless he produces such a certificate.

- (d) Where an employer is by or under a provision of any law required to pay fees for hospital or medical treatment in respect of an employee and he pays such fees in respect of any incapacity of an employee, the employer may set off the amount so paid against any payment which he has to pay in terms of paragraph (a) to the employee in respect of sick leave because of such incapacity.
- (e) The provisions of paragraph (a) shall not apply in respect of any period of incapacity of an employee in respect of which the employer is by or under a provision of any law required to pay the employee an amount of not less than the equivalent of his wage.
- (f) For the purpose of this subclause:
 - (i) any period during which an employee:
 - (aa) is on leave by virtue of clause 15;
 - (ab) is on sick leave by virtue of paragraph (a);
 - (ac) is absent from work on the instruction or at the request of his employer; or
 - (ad) is undergoing military training,

amounting in the aggregate in any sick leave cycle to not more than 30 weeks in respect of the periods referred to in sub-items (aa), (ab) and (ac), plus up to 12 months of any period of military training referred to in sub-item (ad) undergone in that sick leave cycle, shall be deemed to be employment with his employer;
 - (ii) any continuous employment which an employee has had with the same employer at the date from which the Minister declares this part of the Agreement binding shall be taken into account, and any sick leave on full pay granted by the employer to that employee during that period of continuous employment shall be deemed to have been granted under this subclause: Provided that the provisions of this paragraph shall

H -58

apply only to employees exempted from the provisions of subclauses (1) to (12).

- (g) For the purpose of this subclause-
- (i) the provision in paragraph (a) shall apply irrespective of whether or not an employee has exceeded the 30 days (or 36 days - as the case may be) under his incomplete 36-month cycle as at 30 June 1997 in terms of the previous agreement;
 - (ii) any employee who had not been paid by his employer for sick leave taken since 1 July 1997 in terms of the previous agreement, shall be entitled to payment for those days up to a maximum of his new 10-day (or 12 days - as the case may be) entitlement in terms of this part of the Agreement;
 - (iii) sick leave not taken in one year cannot be carried forward to the next year and the following year's paid leave of 10 days (or 12 days - as the case may be) may not be taken in advance. This, however, does not detract from an employee's right to unpaid sick leave when the 10 days (or 12 days - as the case may be) per year limit has been exceeded;
 - (iv) all employees who have been certified as having an illness of 10 days or more (or 12 days - as the case may be) in any period of 36 consecutive months employment with an employer, commencing 1 July 1997 and ending on 30 June 2000, and on 1 July of every 36-month period thereafter, may apply to the Health Care Fund Management Committee referred to in subclause (2) for paid sick leave up to a maximum of 30 days (or 36 days, where more than five days per week are regularly worked), or any balance exceeding 10 days (or 12 days, as the case may be) and still remaining in such period of 36 months: provided that on receipt of such application, the Health Care Fund Management Committee may exercise its right to decide on the merits of the application and rule whether or not the employer should pay for such extended sick leave. The provision is referred to as the "Serious Illness or Injury Provision";
 - (v) employees and employers shall have the right to dispute a decision of payment or non-payment and they may use the dispute resolution procedures of the Bargaining Council to resolve same. These dispute procedures may be applied where an employee or employer objects to the ruling of the Health Care Fund Management Committee or where the Management Committee is unable to make a ruling for whatever reason.
 - (vi) all parents employed in the Industry will be entitled to use all or part of their annual paid sick leave entitlement (10 or 12 days, as the case may be) in terms of this part of the Agreement or the provisions of the Basic Conditions of Employment Act 1997 (Act No 75 of 1997), whichever may be applicable under the circumstances, for the purposes of caring for ill dependent children on condition that -
 - (aa) an ill dependent child must have been diagnosed and certified at a Health Care Facility of the Fund as seriously ill or injured and that the parent's presence is necessary during the period of the child's recovery or part thereof; and
 - (ab) prior appointment for consultation at a Health Care Facility of the Fund has been made or prior notification to the principal

member's employer and/or where the principle member has reported to a Health Care Facility of the Fund:

Provided that the mere presence of the principal member with an ill child at a Health Care Facility of the Fund shall not automatically entitle such member to a certificate for sick leave payment. All certificates will be issued at the sole discretion of the Medical Officer or other professional staff of the Fund. In such cases, the Medical Officer or other professional staff of the Fund shall endorse the certificate with the appropriate wording determined by the Management Committee of the Fund.

Provided further that a principal member parent who presents a certificate for a child which has been issued by a Public Funded Hospital shall be eligible for benefits under this arrangement only in instances where the Fund's own professional staff have confirmed the diagnosis and requirements in terms of this provision.

For purposes hereof, a Public Funded Hospital shall mean any of those larger State Hospitals which usually provide a 24-hour service.

Provided also that employees in the Industry who fall within the jurisdiction of the Regional Chamber and who have been exempted from contributing to the Fund shall be entitled to attend a Health Care Fund facility of the Fund for purposes of obtaining the required certification in respect of an ill dependent child. Such an arrangement however, shall, not entitle the employee or his dependents to any medical attention.

- (14) **Indemnity:** The members of the Management Committee and their alternates shall not be liable for any loss to the Fund arising by any reason of any act in their bona fide administration of the Fund 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 willful 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 or in which he is acquitted.
- (15) **Millinery Industry (Cape):** The provisions of this clause shall *mutatis mutandis* apply to the employers and the employees subject to the Agreement for the Millinery Industry, Cape, published under Government Notice R. 1162 of 8 June 1979, or the corresponding provisions of any agreement superseding that Agreement.
- (16) The Management Committee shall decide from time to time upon the form and manner in which claims shall be lodged and benefits paid in terms of this clause.
- (17) This clause shall not apply to a casual employee.

27: TRADE UNION SUBSCRIPTIONS

- (1) An employer shall deduct trade union subscriptions and levies weekly from the remuneration of trade union members on their written authorisation, other than where an exemption has been granted by the Council or Regional Chamber or by the Independent Exemptions Body: Provided such moneys have been determined in terms of the Union's Constitution. The employer shall forward such amounts so deducted to the Regional Secretary of the Regional Chamber, for transmission to the Union.
- (2) Each month the total amount of such deductions together with a list showing the names and service record card numbers of the employees and the amounts deducted each week for each employee shall be forwarded to the Regional Secretary of the Regional Chamber by no later than the fourteenth day of the month succeeding the month in which they were deducted.
- (3) Every employer must, in respect of each trade union member employed by him contribute towards the **Trade Union Bursary Fund** at the rate of 31cents per week.
- (4) Every employer shall, in respect of each of his employees for whom contributions are paid in terms of clause 22 of this part of the Agreement, contribute towards the **Trade Union's HIV/AIDS Project** at the rate of 45 cents per week.
- (5) Each month the total sum representing trade union subscriptions of employees, bursary fund and HIV/AIDS project contributions by the employer shall be recorded in the manner specified in clause 22(2) of this part of the Agreement and shall then be forwarded to the Regional Secretary of the Regional Chamber.

28: REGISTRATION OF EMPLOYERS

- (1) Every employer on whom this part of the Agreement is binding and who has not already done so in terms of a previous agreement shall within seven days of the date on which this part of the Agreement becomes binding on him furnish to the Regional Secretary of the Regional Chamber the particulars set out in the form and manner specified by the Regional Chamber.
- (2) In the event of any change in the name under which or the address or addresses at which business is carried on, or among the partners, or if the employer is a company, in the name of its secretary or among its directors or managers or, if the employer is a close corporation, among its members, or in the event of the sequestration of the employer's estate or, if the employer is a company or close corporation, of the winding up of the company or close corporation, or in the event of the transfer or abandonment of the business carried on, or the acquisition or commencement of any other business carried on, or the acquisition or commencement of any other business which is subject to this part of the Agreement, every employer shall furnish to the Regional Secretary of the Regional Chamber within seven days notice of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement by means of a written statement setting forth full particulars of the change, sequestration, winding up, transfer, abandonment, acquisition or commencement, as the case may be.

29: WAGE GUARANTEE

- (1) (a) Every employer who enters the Industry after the date of coming into operation of this part of the Agreement shall, within seven days of the date on which such employer commences operations in the Industry, lodge with the Regional Chamber a guarantee acceptable to the Regional Chamber.

- (b) Every employer who entered the Industry prior to the date of coming into operation of this part of the Agreement and who was required to lodge an acceptable wage guarantee with the Regional Chamber shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
 - (c) Where the guarantee lodged by any employer in accordance with the provisions of any previous agreement is no longer valid, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a fresh guarantee as specified in paragraph (a) hereof.
 - (d) Where any employer ceases operations in the Industry and subsequently resumes operations in the Industry, he shall be regarded as a new employer and shall likewise and in the same manner lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
 - (e) Notwithstanding the provisions of subclause (1) (a) of this clause, where any employer fails to pay levies/contributions due to the Regional Chamber and its funds for a period of two months or more within the periods specified, the employer concerned shall on demand by the Regional Chamber lodge with the Regional Chamber a guarantee as specified in paragraph (a) hereof.
- (2) (a) Where the guarantee lodged by an employer is deemed to be inadequate by the Regional Chamber, the employer shall on demand by the Regional Chamber increase the amount of such guarantee to an amount deemed adequate by the Regional Chamber.
 - (b) An employer shall be permitted to reduce the amount of his guarantee where a reduction in the number of employees engaged by such employer warrants a deduction: Provided that no increase or reduction of the amount of any guarantee shall be required or permitted at intervals of less than six months.
- (3) The Regional Chamber shall be entitled to utilize any guarantee lodged by an employer with the Regional Chamber in terms of subclause (1) to pay any amount which may be due to the Regional Chamber by such employer in respect of levies and contributions or to pay any wages and/or leave pay which may be due to any one or more employees of such employer, where the Regional Chamber is satisfied that such wages and/or leave pay is due and payable to the employees concerned by the employer involved. Provided that the total claim in respect of any one or more employees shall not exceed the total amount of the guarantee lodged with the Regional Chamber.

30: MATERNITY LEAVE

- (1) Subject to the provisions of this part of the Agreement a female employee who -
 - (a) has continuously worked for the same employer for not less than one year; and
 - (b) whose employer has been continuously registered with the Regional Chamber for not less than one year;

at the date of commencing her maternity leave shall be entitled to maternity leave not exceeding six months for any one pregnancy.

A female contributor who, has less than one year's continuous service with the same employer and whose employer has not been registered with the Regional Chamber, nor operating in the Industry, for less than one year, shall not qualify for the maternity leave set out in this sub-clause but shall instead be entitled to the maternity leave

H -62

provisions as provided for in Section 25(1) of the Basic Conditions of Employment Act No. 75 of 1997 and all other provisions related to maternity leave in this clause shall apply to such employees.

- (2) During the period of maternity leave all the rights and obligations that the employee and the employer may have under the employment contract shall be suspended and no benefit shall accrue to the employee during this period except that -
- (a) provided she has complied with subclause (3)(a), (b), (c) and (d) hereunder, her service will be regarded as uninterrupted;
 - (b) the employer shall continue to pay - in the case of a Health Care Fund contributor, all Health Care Fund contributions as provided for in this part of the Agreement of the Council and, in the case of a Provident Fund contributor, all Provident Fund contributions as provided for in the collective agreement of the Provident Fund of the Regional Chamber - in respect of himself and of any employee on maternity leave while such employee is on such leave until -
 - (i) the employee breaches the provisions of this part of the Agreement by failing to notify her employer of her intended date of return to work as provided for in subclause (3)(b) below, unless good cause for such failure is shown; or
 - (ii) the employee breaches the provisions of this part of the Agreement by failing to return to work on the date as provided for in subclause 3(a) and (b) below, unless good cause for such failure is shown; or
 - (iii) the employee returns to work;

whichever occurs first.

Provided that an employer shall not be required to make the contributions outlined in sub-clause (2)(b) above, for an employee who has worked for the same employer for less than one continuous year and whose employer has not been registered with the Regional Chamber, nor operating in the Industry for less than one year. Such employees shall, for the duration of their maternity leave, be entitled to utilise a Health Care Fund operated facility and shall also not be prejudiced with regard to any benefit to which they may be entitled to in terms of the Collective Agreement of the Provident Fund of the Regional Chamber.

- (3) At the end of the period of maternity leave the employee shall be entitled to resume her work in a position identical or similar, but not less favourable, to the one which she held prior to her taking maternity leave. This obligation on the employer to re-engage the employee shall be subject to and conditional upon the employee having complied with the following:
- (a) Completing a form as specified for such purpose by the Regional Chamber, at least one month before the date of commencement of her maternity leave: Provided that this requirement shall not apply in the event of the employee having to stop work, due to medical reasons, earlier than anticipated; and
 - (b) notifying her employer at least four weeks prior to her intended date of return to work of her intention to so return to work by completing a form as specified for such purpose by the Regional Chamber, or by any other written notification, and forwarding such form or notice to her employer per registered mail or by delivering such notice or form to a responsible officer of the employer and obtaining a written acknowledgment of receipt thereof; and

- (c) returning to work and resuming her normal duties on the date stipulated in the form referred to in subclause 3(a), or by showing good cause why it was not possible to return to work on the stipulated date; and
 - (d) commencing her maternity leave not earlier than at 22 weeks of pregnancy and returning to work within the six month period or, where the maternity leave period expires during the employer's annual leave period or the return day falls on a public holiday, by returning to work on the first working day after the annual leave period or the public holiday.
- (4) Subject to the provisions of this part of the Agreement, no employer shall require or permit any female employee to work during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after the date of her confinement.
 - (5) An employer shall be entitled to fill a position which has become vacant due to an employee having gone on maternity leave by employing another person on a fixed-term contract until the return of the employee from maternity leave. The fixed-term contract shall contain the provisions set out in the form specified for such purpose by the Regional Chamber, and shall be signed by both the employer and the temporary employee. The latter shall be remunerated at the wage prescribed in this part of the Agreement for the class in which he is employed.
 - (6) Although the contract of employment of an employee may be terminated if she fails to comply with the provisions of subclause 3(a), (b), (c) and (d) above, such termination will not in any way whatsoever change the temporary nature of the fixed-term contract of employment of any other employee who may have been employed to fill her position.

31: NEGOTIATION OF PROCEDURES AT INDIVIDUAL ESTABLISHMENTS

- (1) An employer shall, at the request of the Trade Union, negotiate with the Trade Union at his establishment on procedures relating to-
 - (a) grievances;
 - (b) discipline;
 - (c) retrenchment;
 - (d) health and Safety.
- (2) The negotiations referred to in subclause (1) shall commence within 15 working days of the date of receipt of any such request.
- (3) This clause shall not detract from the right of an employer to act in a fair manner relating to the above matters, in the absence of negotiated procedures. This clause equally shall not detract from the right of an employee to be treated in a fair manner.

32: ACCESS

- (1) Trade Union officials shall be entitled to be granted reasonable access to establishments provided that prior permission, which shall not be unreasonably withheld is obtained from an official designated by the employer concerned.
- (2) If the designated official should be absent from the establishment for a period of four hours or longer the most senior official of the employer who may be present shall be deemed to be the designated official as from the beginning of the four-hour period.
- (3) Access shall be subject to any existing written access agreements signed by both the Trade Union and the individual employer concerned.

H -64

- (4) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.

33: SHOP STEWARDS

- (1) An employer shall recognise the right of the Trade Union to have shop stewards elected by its members at his establishment.
- (2) A shop steward recognition agreement at an establishment shall, on request by the Trade Union or the employer, be negotiated between the Trade Union and the employer. Negotiations shall commence within 15 working days of the date of receipt of such request.
- (3) Provided that an outline of each such training course has been lodged with Regional Chamber, and is available on request to any employer, shop stewards shall be entitled to four days' paid leave per annum per shop steward to attend shop stewards' training courses if such attendance falls within normal working hours.
- (4) In addition to the leave granted in (3) above, shop stewards shall be eligible for and have access to further paid leave to attend to trade union duties. This additional leave shall be calculated at six days per annum per shop steward. At each establishment this additional leave shall be pooled and the shop stewards shall be entitled to use the additional leave so pooled to attend to trade union duties in any manner that the trade union deems fit: Provided that in establishments employing five or fewer employees, the trade union shall give the employer ten days' written notice of the activity for which it seeks time off in terms of this clause.
- (5) Shop stewards at all establishments shall be granted reasonable facilities to enable them to carry out their legitimate trade union duties, provided that prior permission, which shall not be unreasonably withheld, shall be obtained from management.
- (6) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

34: RETRENCHMENT BENEFITS

- (1) An employer shall 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, unless the employer has been exempted from the provisions of this clause.
- (2) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer is not entitled to severance pay in terms of subclause (1).
- (3) The payment of severance pay in compliance with this clause shall not affect an employee's right to any other amount payable according to law.
- (4) If there is a dispute only about the entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the Regional Chamber, if the parties to the dispute fall within the registered scope of the Regional Chamber.
- (5) An employee who refers the dispute to the Regional Chamber shall satisfy the Regional Chamber that a copy of the referral has been served on all the other parties to the dispute.
- (6) The Regional Chamber shall attempt to resolve the dispute through conciliation.

- (7) If the dispute remains unresolved, the employee may refer it to arbitration.

35: PATERNITY LEAVE

Male employees, regardless of marital status, shall be entitled, subject to prior arrangement, to a maximum of three days' unpaid paternity leave per annum. The employer shall be entitled to require proof of paternity.

36. PROCEDURE TO ENFORCE COMPLIANCE WITH THIS PART OF THE AGREEMENT

- (1) The Council or Regional Chamber shall take all reasonable steps necessary to ensure compliance with this part of the Agreement. If, whether through its own investigations or through any other source, it appears as if the provisions of this part of the Agreement has been breached then the following procedure shall apply to enforce compliance:
- (a) The General Secretary or Regional Secretary or relevant official of the Council or Regional Chamber shall appoint a designated agent to investigate the alleged breach and / or refer the matter to the Regional Chamber's Disputes Committee.
 - (b) If, upon completion of the investigation the designated agent or Disputes Committee has reason to believe that this part of the 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 Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this part of the Agreement through conciliation and the outcome thereof.
 - (d) Upon receipt of the report, the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council may:
 - (i) require the designated agent to make further investigations; or
 - (ii) refer the matter to arbitration in terms of this part of the Agreement; or
 - (iii) take such other steps as may be deemed reasonable.
 - (e) If the Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary of the Council decides to refer the matter to arbitration, he must appoint an arbitrator to hear and determine the alleged breach of this part of the 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 Regional Secretary or relevant official of the Regional Chamber and/or the General Secretary 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 or for the Council or Regional Chamber to recover its costs of providing the arbitration service, provided that :

where the Council's or Regional Chamber'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 and/or Regional Chamber'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. Notice of the arbitration proceedings 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 part of the 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 or Regional Chamber.
 - (k) The General Secretary of the Council or Regional Secretary of the Regional Chamber may apply to make the arbitration award an order of the Labour Court in terms of Section 158(1) of the Labour Relations 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 or Regional Chamber.

37: DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or in this Collective Agreement, any dispute within the registered scope of the Council shall be resolved as set out below:
 - (a) The General Secretary of the Council shall, after consultation with the Secretary of any relevant Regional Chamber, decide whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
 - (b) The Council shall, from time to time, adopt by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.
 - (c) When any dispute is allocated to a Regional Chamber in terms of this clause, then such Regional Chamber shall have the same rights, powers and obligations as the Council.
- (2) **Accreditation-**
 - (a) With a view to performing its dispute resolution functions in terms of section 51 (3) of the Act only, the Council shall by decision apply to the governing body of the CCMA for accreditation to perform these functions, as appropriate.
 - (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of section 51 (3) of the Act.
- (3) **Panel of conciliators, arbitrators and senior arbitrators:**
 - (a) The Council shall appoint
 - (i) a panel of conciliators, for the purpose of conciliating disputes;
 - (ii) a panel of arbitrators, for the purpose of determining disputes;
 - (iii) a panel of senior arbitrators, for the purpose of determining disputes where-

H -68

- (aa) the nature of the questions of law raised by the dispute;
 - (bb) the complexity of the dispute;
 - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
 - (dd) the public interest requires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council shall determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council shall attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and arbitrators, the following process shall be followed:
 - (i) The union parties to the Council shall prepare a list of nominees to fill the remaining vacancies on each panel, and the employer parties to the Council shall do likewise.
 - (ii) The lists prepared by the parties shall be exchanged, and the union shall rank the nominees of the employer parties in order of their preference, and the employer parties shall do likewise in respect of the nominees of the union parties.
 - (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' lists shall 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 General Secretary of the Council shall draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant 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 arbitrators and senior arbitrators not be re-appointed, all parties to the Council shall attempt to reach agreement on the persons to be appointed to the panel or senior panel, failing which the remaining vacancies shall be filled in accordance with the method described in subclause (3) (c) above.
- (e) Notwithstanding subclause (3) (d) above, the Council may remove a member of the panel of conciliators or arbitrators from office-
 - (i) for serious misconduct; or
 - (ii) owing to incapacity; or
 - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.

- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel in accordance with the method described in subclause (3) (c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to subclause (3) (i), a person may be appointed to one or more of the panel of conciliators or arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators: Provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council shall not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the panel of senior arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or another designated official shall appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

(4) *Disputes Involving non-parties to the Council*

Any dispute contemplated in section 51 (3) of the Act, where any party to the dispute is not a party or a member of a party to the Council shall be resolved by the Council in accordance with the following procedure:

- (a) *Referral and conciliation of disputes*
 - (i) Any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought.
 - (ii) The party who refers the dispute to the Council shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute.
 - (iii) The General Secretary or other designated official shall appoint a member of the panel of conciliators who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council's receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute.
 - (iv) The conciliator may, during conciliation proceedings-
 - (aa) mediate the dispute;
 - (bb) conduct a fact-finding exercise; and
 - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
 - (v) Representation of a party to the dispute in the conciliation proceedings shall be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.

H -70

- (vi) At the end of the thirty (30) day period, referred to in subclause (4) (a) (iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council shall issue a certificate stating whether or not the dispute has been resolved.
 - (vii) Nothing in this part of the Agreement shall prevent an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.
- (b) *Adjudication of disputes referred to the Council for arbitration-*
- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if-
 - (aa) the Act requires that the dispute be arbitrated; or
 - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
 - (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
 - (iii) Such written request for arbitration shall be made within the time period prescribed in the Act, provided that the arbitrator may permit a late request for arbitration on good cause shown.
 - (iv) The General Secretary or other designated official of the Council shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.
 - (v) 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 the arbitrator to be frivolous or vexatious.
 - (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of subclause (4) (b) (v) above has been granted by the arbitrator, shall have the right to-
 - (aa) give evidence;
 - (bb) call witnesses;
 - (cc) question the witnesses of any other party;
 - (dd) address arguments to the arbitrator;
 - (ee) be represented in accordance with the provisions of sections 138 and 140 of the Act.
 - (vii) The arbitration proceedings shall be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable,

sections 139, 140 and 141 of the Act, read with the changes required by the context.

- (viii) Representation at arbitration proceedings shall be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute shall have the powers of a Commissioner in terms of sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute shall be final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord; and, without limiting the generality thereof, 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;
 - (bb) the award is ambiguous or contains an obvious error or omission;
 - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council shall serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council shall apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.

(5) Disputes involving parties to the Council-

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official shall appoint a member of the panel of conciliators, who shall attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council, which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, shall be resolved by the Council in accordance with the procedure set out in subclause (4) above, subject to the proviso in subclause (5) (d) below.

- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council shall appoint a member of the panel of senior arbitrators to arbitrate the dispute.

(6) Compliance procedure and enforcement of collective agreements by Council-

- (a) The Council shall request the Minister to appoint certain identified persons to be the designated agents of the Council to promote, monitor and enforce compliance with this Collective Agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
- (i) The General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber.
- (ii) If, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by, the Council, where these exist, by-
- (aa) publicising the contents of the agreement;
- (bb) conducting inspections;
- (cc) investigating complaints;
- (dd) endeavouring to secure compliance with the agreement through conciliation; or
- (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
- (iii) The designated agent shall report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
- (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.
- (v) The General Secretary or other designated official of the Council or Regional Chamber shall appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (vi) The General Secretary or other designated agent of the Council or Regional Chamber shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.

- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber shall request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of subclauses (4) (b) (v) to (4) (b) (xii) above shall apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including-
 - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
 - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and section 33A (13) of the Act;
 - (cc) charging a party to the arbitration an arbitration fee;
 - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
 - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
 - (ff) any award contemplated in section 138 (9) of the Act;
 - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of this subclause shall be final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in section 143 (1) of the Act.
- (xii) The provisions of this procedure stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

(7) Non-Compliance

- (a) Outsourcing to non-compliant companies shall not be permitted in the industry.
- (b) The parties shall enter into agreements with all Provincial and Local governments which shall have the effect that their sourcing from the Industry shall include a requirement to only source from companies which hold a valid Certificate of Compliance from the bargaining council.

(8) Compliance Promotion

- 8.1 All current non-compliant companies which meet a minimum of 80% of the party-to-party *negotiated wage rate* for current employees, shall be regarded as level B compliant, subject to sub-clause 8.2 below.
- 8.2 All companies described in 8.1 above shall achieve 100% wage compliance within a period of 18 months from 1 September 2012, in 6 monthly equal increments, failing which full compliance enforcement including the execution of writs shall apply to them.
- 8.3 The arrears of non-compliant companies shall be ring-fenced in a 'suspense account' at 100% of the verified arrears value and a written time-bound repayment plan agreed with the bargaining council. They should also sign a legally enforceable acknowledgement of debt.
- 8.4 The current policy that allows for a maximum of 6-months as a repayment period for arrears shall be amended, to allow for a maximum eighteen (18) months repayment period with effect from 1 November 2012.
- 8.5 The arrears will become payable in full should the employer become non-compliant, or default on the repayment plan at any time in future, unless otherwise agreed by the parties.
- 8.6 At every future meeting of the National Bargaining Council, each party shall make one practical concrete suggestion on how to further promote compliance in the industry.
- 8.7 The National Bargaining Council General Secretary shall have unfettered authority to serve any writ of execution upon any employer who fails to become compliant in terms of the new compliance provisions envisaged in this agreement, unless the parties agree otherwise.
- 8.8 Nothing in this agreement shall have the effect of downward migration of conditions of employment for any current employee.
- 8.9 The Trade Union shall have the unfettered right to embark on industrial action against any company which fails to implement the terms of this agreement.

38 : INDUSTRY PROTECTION FUND

- (1) In terms of section 28(1)(g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a Fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the Parties to the Regional Chamber, which programmes are aimed at protecting the industry in the Western Cape Sub-Chamber of the Cape Chamber of the Council, and jobs within it by improving its competitiveness in the fashion industry.
- (3) The Fund shall commence on 1 July 2001 and shall continue to operate until such date as the Regional Chamber and the Parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 12 cents.

- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4), contribute an amount of 19 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.
- (7) The monies collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.
- This account will be administered by the Regional Chamber.
- (8) The monies collected shall be used by the Regional Chamber to finance the following *bona fide* strategies in pursuit of the objects of the Fund as set out in sub-clause (2) -
- (a) 'Buy Local' campaigns;
 - (b) Combating customs fraud and illegal imports.
- or for such other strategies that meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Cape Clothing Association (CCA) become or wish to become engaged in additional strategies or *bona fide* activities in pursuit of the objectives of the Fund other than those specified in sub-clause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber and subject to approval by the Registrar : Labour.
- (10) The Fund's monies shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the CCA is in doubt about whether contemplated expenditure of the Fund's monies qualifies as expenditure on an authorised activity, SACTWU or the CCA, as the case may be, may request confirmation in advance by the Regional Chamber in this regard.
- (12) No monies of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the CCA and the Regional Chamber have signed a written agreement, acceptable to the Registrar : Labour, to secure compliance with the provisions of the Fund as set out herein.
- (13) Any interest that is earned on Fund monies at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the CCA shall, annually, by the second month of the Regional Chamber's financial year, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan will be submitted to the Regional Chamber for approval.

H -76

- (15) Expenditure incurred by the Parties will be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he is satisfied that the expenditure:
- (a) is in terms of the approved plan;
 - (b) is clearly classified by strategy, activity and the nature of the expense; and
 - (c) has been authorised by the Regional Organising Secretary or National Organising Secretary of SACTWU, or the Executive Director of the CCA.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure will be presented to the Regional Chamber for approval prior to payment.

- (16) Any expenses that have been incurred by SACTWU or the CCA for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the CCA, may be recovered by the Regional Chamber from SACTWU or the CCA, as the case may be.
- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the CCA shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund.
- (19) In the event that there is a disagreement between the Parties as to whether any activity or expenditure or proposed activity expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.
- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

39 : TRADE UNION CAPACITY BUILDING FUND

- (1) A Trade Union Capacity Building Fund, hereinafter referred to as "the Fund" is hereby established.
- (2) The Fund shall be administered by the Regional Chamber, or its successor in name and title, for and on behalf of the union and its members in terms of the rules of the Fund as approved by the Registrar : Labour.
- (3) Every employer shall, in respect of each employee for whom wages are prescribed in the Council's Main, Knitting Division and Country Areas Collective Agreements for the Western Cape Region, contribute an amount of 36 cents per week.
- (4) The total sum representing the employer's contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the 14th day of each month following the month to which such contributions relate in the form and manner specified in clause 22(2) of this part of the Agreement.

- (5) All monies received by the Regional Chamber for and on behalf of the Fund, shall be paid monthly by the Regional Chamber into a banking account styled, the "Trade Union Capacity Building Fund" opened and administered by the Regional Chamber for the purpose of reimbursing it to the Union in terms of the rules of the Fund.
- (6) Monies in the Fund's banking account not required to meet the current reimbursements may be invested by the Regional Chamber as per the requirements of the Act.
- (7) Any interest that is earned on Fund monies shall accrue to the Fund and be used in terms of the rules of the Fund.
- (8) The accounts of the Fund shall be annually audited in terms of generally accepted auditing standards by the Council's auditors.
- (9) The Regional Secretary of the Regional Chamber shall report to the Regional Chamber on a quarterly basis on all expenditure of the Fund, including, but not limited to providing a schedule detailing the income collected and authorized reimbursements made to the Union and matters incidental thereto as may be requested by the Regional Chamber from time to time. The Union shall provide the Regional Secretary of the Regional Chamber, on a monthly basis, with the details of the expenditure incurred in this regard.
- (10) The audited annual financial statements of the Fund shall be signed by the Chairperson and Regional Secretary of the Regional Chamber and a relevant Union official and be submitted to the Department of Labour as per the requirements of the Act or any other regulations and conditions that may be set by the Registrar : Labour upon approval of the Fund's rules, or from time to time.

40 : COLLECTIVE BARGAINING/DISPUTE RESOLUTION LEVY

- (1) The parties to this part of the Agreement recognise that the Cape Clothing Association ("the CCA") is the majority employers' organisation in the region covered by the Western Cape Sub-Chamber of the National Bargaining Council for the clothing manufacturing industry ("the region"), that it incurs significant expenses during annual collective bargaining and by participating in dispute resolution, and that employers who are not its members derive a benefit from these activities without contributing to the cost thereof. Accordingly the parties agree that every employer in the region, who is subject to this part of the Agreement, shall pay a monthly fee in an amount calculated in terms of sub clause (2) hereunder, on the following basis -
 - a. every employer that belongs to the CCA shall pay its membership fee directly to the CCA;
 - b. every employer that does not belong to the CCA shall pay a monthly levy equal to the membership fee, that the employer would have paid if it were a member of the CCA, to the Regional Secretary of the Regional Chamber on or before the 14th day of each month, together with a breakdown of the amount so paid.
- (2) The amount of the monthly levy shall be as determined at a the general meeting of the CCA from time to time, which shall be identical to the monthly membership fee for ordinary members of the CCA.
- (3) The Regional Secretary of the Regional Chamber shall deposit all monies received in terms of this clause into a separate, dedicated banking account in the name of the "CCA levy account".

H -78

- (4) The Regional Chamber shall disburse monies from the account to the CCA on receipt of acceptable proof by the CCA of disbursements incurred by it as contemplated by clause 5 below.
- (5) The monies received in terms of the provisions of this clause may be used only for expenditure incurred by the CCA in respect of:
 - (a) collective bargaining; and
 - (b) dispute resolution,and may not be:
 - (c) paid to a political party as an affiliation fee; or
 - (d) contributed in cash or kind to a political party or a person standing for election to any political office.
- (6) The CCA shall arrange for an annual audit of the "CCA levy account" within six months of its financial year by an auditor who:
 - (a) shall be independent;
 - (b) shall conduct the audit in accordance with generally accepted auditing standards;
 - (c) shall report in writing to the CCA and to the Regional Chamber expressing an opinion as to whether or not the CCA has complied with the provisions of its constitution relating to financial matters and the provisions of sub clause (5).
- (7) Any person may inspect the auditor's report submitted to the Regional Chamber in terms of sub clause (6) at the Regional Chamber's offices at Industria House, 350 Victoria Road, Salt River, Cape Town.
- (8) The Regional Chamber shall provide a certified copy of, or extract from, the auditor's report to any person requesting such copy or extract.
- (9) The Regional Chamber's exemption committee may on application from an employer who conscientiously objects to associating with persons other than those who share his religious beliefs or who shows good cause, grant an exemption from the provisions of this clause.
- (10) Any dispute about the application, enforcement, or interpretation of the provisions of this clause shall be referred to a conciliator and arbitrator agreed on by the parties to the dispute. Provided that if no agreement is reached within 30 days of the lodging of the dispute, the conciliator and arbitrator shall be appointed by the Regional Chamber from its list of accredited conciliators / arbitrators.
- (11) No payment of levies by non-members shall be made in terms of this clause for any period that the CCA does not represent the employers who employ the majority of employees in the region for whom wages are prescribed in this part of the Agreement. The Regional Chamber shall forthwith inform all concerned if this should occur.
- (12) Despite the fact that this clause may have ceased to be operative or that the CCA may have lost its majority, the funds in the "CCA levy account" may continue to be disbursed until they have been exhausted.

41: FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This part of the Agreement shall remain in force until 31 August 2014: Provided that the parties to the Council shall annually negotiate through collective bargaining amendments to this part of the Agreement, unless they agree to negotiate at different intervals: Provided further that no amendment(s) shall take effect before 1 September 2013.
- (2) The parties to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees, shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act, after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65 (3) of the Act shall not render industrial action as contemplated in subclause (2) above unprocedural.

42: ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) The Council shall conduct a survey on the extent and type of contract work in the clothing industry.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to cooperate with the survey.

43: EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

Persons under the age of 15 years: No employer shall employ any person under the age of 15 years.

44: TRADE UNION AGENCY SHOP

- (1) **Scope-** Agency fees will apply to employees who –
 - (a) are not members of the trade union party, but are eligible for membership thereof;
 - (b) are not bound by the provisions of the closed shop clause; and
 - (c) fall within the scope of this part of the Agreement.
- (2) **Union membership:** Employees are not compelled to become members of the trade union party.
- (3) **Agency fee deductions:** Every employer to whom this clause applies shall:
 - (a) deduct from the wages of an employee an amount equivalent to the union subscription; and

H -80

- (b) pay such monies to the Regional Secretary of the Regional Chamber within fourteen days of month-end in which the deductions fall due.
 - (c) deduct the agency fee from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
- (4) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
- (5) **Utilisation of agency fees:** No agency fee deducted may be -
- (a) paid to a political party as an affiliate fee;
 - (b) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (c) used for any expenditure that does not advance or protect the socio-economic interests of employees.

45: PRODUCTIVITY

The Productivity Scheme which was agreed to is:

Contained in Annexure B.

- (1) The bargaining council shall establish a dedicated productivity unit to promote productivity issues in the industry, as part of the NBC's value-added services.
- (2) The bargaining council shall commission a feasibility study for the establishment of a training institute similar to the previous Clothing Industry Training Board (CITB), to be operated under the auspices of the bargaining council as part of the NBC's value-added services.
- (3) Absenteeism
 - (i) The memorandum of Understanding as concluded between the parties on 14 June 2007 and implemented shall remain in effect for the duration of the Agreement only.
 - (ii) Where companies' have introduced the productivity scheme as per the provisions of the absenteeism MOU, such schemes are extended for the duration of this agreement, subject to plant level agreements entered into and signed off.

46: HIV/AIDS

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment as set out in Annexure A to this agreement shall be policy in the industry.

World International HIV/AIDS Day

The industry acknowledges the importance of creating awareness of the HIV/AIDS pandemic. To this end, employers are encouraged to grant employees on World International HIV/AIDS Day thirty minutes paid time off to participate in awareness activities agreed to at industry level.

47: CONTRACT EMPLOYEES

Contained in Annexure D.

48: WORKING IN ARRANGEMENTS

Employees shall be permitted to work in the time lost due to strike action incurred during the September / October 2009 protected wage strike at normal rates of pay, provided that this is agreed to at plant level and further provided that where agreed, such employees shall be offered a loan equal to between one week and two weeks' wages, deductible from their wages in equal weekly amounts over a 10 week period.

ANNEXURE A**CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS
AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING
INDUSTRY OF SOUTH AFRICA****1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:
 - eliminating unfair discrimination in the workplace based on HIV status;
 - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
 - promoting appropriate and effective ways of managing HIV in the workplace;
 - creating a balance between the rights and responsibilities of all parties.

2. OBJECTIVES

- 2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
 - (i) creating a non-discriminatory work environment;
 - (ii) dealing with HIV testing, confidentiality and disclosure;
 - (iii) providing equitable employee benefits;
 - (iv) dealing with dismissals; and
 - (v) managing grievance procedures.

- 2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:
- (i) creating a safe working environment for all employers and employees;
 - (ii) developing procedures to manage occupational incidents and claims for compensation;
 - (iii) introducing measures to prevent the spread of HIV;
 - (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
 - (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:
- (i) between employers, employees and the trade union in the workplace; and
 - (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

3. POLICY PRINCIPLES

- 3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5. Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

4. APPLICATION AND SCOPE

- 4.1. All employers and employees within the clothing manufacturing industry, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this code, the term "workplace" should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.
- 4.3. This Code, however, does not impose any legal obligation in addition to those in the Employment Equity Act, the Labour Relations Act and this code, or in any other legislation referred to in the Code.

- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

5. LEGAL FRAMEWORK

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:
- (i) Employment Equity Act, No. 55 of 1998;
 - (ii) Labour Relations Act, No. 66 of 1995;
 - (iii) Occupational Health and Safety Act, No. 85 of 1993;
 - (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
 - (v) Basic Conditions of Employment Act, No. 75 of 1997; and
 - (vi) Medical Schemes Act, No. 131 of 1998.
 - (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.
- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.
- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.
- 5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.
- 5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.
- 5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.
- 5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).
- 5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.
- 5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

- 5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].
- 5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT

- 6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:
- (i) recruitment procedures, advertising and selection criteria;
 - (ii) appointments, and the appointment process, including job placement;
 - (iii) job classification or grading;
 - (iv) remuneration, employment benefits and terms and conditions of employment;
 - (v) employee assistance programmes;
 - (vi) job assignments;
 - (ix) training and development;
 - (x) performance evaluation systems;
 - (xi) promotion, transfer and demotion;
 - (xiii) termination of services.
- 6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:
- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
 - (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
 - (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
 - (iv) providing support for all employees infected or affected by HIV and AIDS; and
 - (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE

7.1. HIV Testing

- 7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

H -86

- 7.1.2. Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts. ^{1[1]}
- 7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out in item
- 7.1.4. Authorised testing
- Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:
- (i) during an application for employment;
 - (ii) as a condition of employment;
 - (iii) during procedures related to termination of employment;
 - (iv) as an eligibility requirement for training or staff development programmes; and
 - (v) as an access requirement to obtain employee benefits.
- 7.1.5. Permissible testing
- (a) An employer may provide testing to an employee who has requested a test in the following circumstances:
 - (i) As part of a health care service provided in the workplace;
 - (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
 - (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.
 - (b) Furthermore, such testing may only take place within the following defined conditions:
 - (i) At the initiative of an employee;
 - (ii) Within a health care worker and employee-patient relationship;
 - (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
 - (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.
- 7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.
- 7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

^{1[1]} The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the National Bargaining Council for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

- 7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.^{2[2]} Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

7.2. Confidentiality and Disclosure

- 7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.
- 7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.
- 7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:
- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
 - (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
 - (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

8. PROMOTING A SAFE WORKPLACE

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:
- (i) the risk, if any, of occupational transmission within the particular workplace;
 - (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
 - (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
 - (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
 - (v) the procedures to be followed in applying for compensation for occupational infection;
 - (vi) the reporting of all occupational accidents; and
 - (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

^{2[2]} See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
- (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.

- 9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

10. EMPLOYEE BENEFITS

- 10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits
- 10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

11. DISMISSAL

- 11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.
- 11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

12. GRIEVANCE PROCEDURES

- 12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.
- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.

- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

13. MANAGEMENT OF HIV IN THE WORKPLACE

- 13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:

13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and

13.1.2. Long and short term measures to deal with and reduce this impact, including:

- (i) An HIV/AIDS Policy for the workplace
- (ii) HIV/AIDS Programmes, which would incorporate:
 - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
 - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
 - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE

- 14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.

14.2. Broadly, impact assessments should include:

- (i) Risk profiles; and
- (ii) Assessment of the direct and indirect costs of HIV/AIDS;

14.3. Risk profiles may include an assessment of the following:

- (i) The vulnerability of individual employees or categories of employees to HIV infection;
- (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
- (iii) A profile of the communities from which the organisation draws its employees;
- (iv) A profile of the communities surrounding the organisation's place of operation; and
- (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.

14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:

- (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
- (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;

14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE

15.1. A Workplace HIV/AIDS Policy

15.1.1. Every workplace should develop an HIV/AIDS policy^{3[3]}, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;
- (ii) an outline of the HIV/AIDS programme;
- (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);
- (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
- (v) grievance procedures in line with item 12 of this Code;
- (vi) set out the means of communication within the organisation on HIV/AIDS issues;
- (vii) details of employee assistance available to persons affected by HIV/AIDS;
- (viii) details of implementation and coordination responsibilities; and
- (ix) monitoring and evaluation mechanisms.

15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including the trade union, employee representatives, occupational health staff and the human resources department.

15.1.3. The policy should reflect the nature and needs of the particular workplace.

15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:

- (i) communicated to all concerned;
- (ii) routinely reviewed in light of epidemiological and scientific information; and
- (iii) monitored for its successful implementation and evaluated for its effectiveness.

15.2. Developing Workplace HIV/AIDS Programmes

15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:

- (i) hold regular HIV/AIDS awareness programmes;
- (ii) encourage voluntary testing;
- (iii) conduct education and training on HIV/AIDS;
- (iv) promote condom distribution and use;
- (v) encourage health seeking behaviour for STD's;

^{3[3]} This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

- (vi) enforce the use of universal infection control measures;
- (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
- (viii) endeavour to establish a wellness programme for employees affected by HIV/AIDS;
- (ix) provide access to counselling and other forms of social support for people affected by HIV/AIDS;
- (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
- (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4
- (xii) regularly monitor, evaluate and review the programme.

15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

16. INFORMATION AND EDUCATION

- 16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.
- 16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.

GLOSSARY

<i>Affected employee</i>	an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive
<i>AIDS</i>	AIDS is the acronym for "acquired immune deficiency syndrome". AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
<i>Epidemiological</i>	The study of disease patterns, causes, distribution and mechanisms of control in society.
<i>HIV</i>	HIV is the acronym for "human immuno deficiency virus". HIV is a virus which attacks and may ultimately destroy the body's natural immune system.
<i>HIV testing</i>	taking a medical test to determine a person's HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of 'risk behaviour' (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee's or job applicant's HIV status.
<i>HIV positive</i>	having tested positive for HIV infection.
<i>Infected employee</i>	an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
<i>Informed consent</i>	a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
<i>Policy</i>	a document setting out an organisation's position on a particular issue.
<i>Pre and post test counselling</i>	a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
<i>Reasonable Accommodation</i>	means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
<i>STDs</i>	acronym for "sexually transmitted diseases". These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.
<i>Surveillance Testing</i>	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

ANNEXURE B**PRODUCTIVITY****The following provisions shall be applicable to the plant level productivity incentive schemes:**

- (1) Employers shall pay an amount of 0.5% of the weekly wage into a dedicated productivity incentive bank account. This must be done on a weekly basis or on the date that wages is normally paid, if it is paid at a time other than weekly.
- (2) The money in this productivity incentive bank account is ringfenced for the introduction of plant level productivity incentive schemes only.
- (3) This productivity incentive scheme bank account shall be opened and authorised on the basis of co-signatures, as follows: a person nominated by management plus a SACTWU shop steward (where there are no shop stewards at a workplace, a representative nominated by the workers shall be the second signatory).
- (4) With effect from 1 September 2008, each workplace shall have a period of 2 months within which they must reach agreement between management and the union about how the productivity incentive scheme at that workplace will function and how the incentives are to be paid.
- (5) If there is no productivity incentive scheme agreement reached by 1 November 2008, all the monies in the productivity bank account must be paid out to the workers as part of their wages, until an agreement on an appropriate productivity incentive scheme is reached.
- (6) The productivity incentive scheme agreements reached must ensure that all workers covered by the terms of this agreement, not just some, shall benefit from the incentive scheme.
- (7) All productivity scheme agreements reached must be registered with the National Bargaining Council for the Clothing Manufacturing Industry, within 1 month after agreement has been reached.
- (8) Productivity incentive scheme agreements shall not contain any provisions, which have the effect of downward variation of any term or condition of employment.
- (9) The productivity incentive scheme envisaged in this agreement shall be in addition to and not in place of any existing productivity incentive scheme, which may currently exist.
- (10) If the workplace closes or is liquidated, all the money left in the productivity incentive bank account must be paid out to the employees at that workplace and who are covered by the terms of this agreement.

H -94

ANNEXURE D**CONTRACT EMPLOYEES**

- (1) Those contract employees with 12 months' or more employment with the same employer shall be converted into permanent employees.
- (2) All contract employees shall be entitled to receive a pro-rata share of all statutory payments due to permanent employees.
- (3) All contract employees who are in employ as at the end of November each year shall be entitled to full payment for all public holidays which fall during the annual shutdown period.
- (4) Employees who have completed a learnership shall not be placed on a further contract period after the completion of such a learnership, but shall be employed as a permanent fulltime employee.
- (5) Where there are more beneficial arrangements (other than those set out in sub-clauses (1) to (4) above) governing the employment of contract workers, such provisions shall remain effective.

PART 1:

**CONSOLIDATED
AGREEMENT
FOR THE
NON-METRO
AREAS**

NATIONAL BARGAINING COUNCIL FOR THE CLOTHING MANUFACTURING INDUSTRY**NATIONAL MAIN COLLECTIVE AGREEMENT**

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

Cape Clothing Association

Coastal Clothing Manufacturers' Association

Eastern Province Clothing Manufacturers' Association

Free State and Northern Cape Clothing Manufacturers' Association

¹South African Clothing Manufacturers' Association

Transvaal Clothing Manufacturers' 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 National Bargaining Council for the
Clothing Manufacturing Industry.

¹ *This Employer association has not signed the 2013/2014 Party-to-Party Agreement, however, remains an Employer Party to the Bargaining Council and, hence, is reflected on this page.

1. SCOPE OF APPLICATION

The terms of this Agreement shall be observed in the Clothing Manufacturing Industry in all areas of the Republic of South Africa as individually provided for in each of the following Parts:

Part A Provisions for the Eastern Cape Region

Part B Provisions for the Free State and Northern Cape Region

Part C Provisions for the KwaZulu-Natal Region

Part D Provisions for the Northern Region (Clothing)

Part E Provisions for the Northern Region (Knitting)

Part F Provisions for the Western Cape Region (Clothing)

Part G Provisions for the Western Cape Region (Country Areas)

Part H Provisions for the Western Cape Region (Knitting)

Part I Provisions for the Non-Metro Areas

by the employers and employees in the Clothing Industry who are members of the employers' organisations and the trade union, respectively.

2. PERIOD OF OPERATION OF THIS AGREEMENT

- (1) This agreement is binding on the parties hereto from 1 September 2013 until 31 August 2017 unless the parties agree otherwise in writing.
- (2) The parties record that they intend to request the Minister of Labour to extend this agreement to non-parties in the Clothing Industry in terms of section 32 of the Labour Relations Act 66 of 1995. The period of operation of this agreement in respect of non-parties will be determined by the Minister.

Original Agreement signed at CAPE TOWN on behalf of the Parties the 24th day of FEBRUARY 2014.


FREDA OOSTHUYSEN
Chairperson


MARTHIE RAPHAEL
Vice-Chairperson


SIFELO NDUNA
General Secretary

PART I : PROVISIONS FOR THE NON-METRO AREAS**1. SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT**

- (1) The terms of this part of the Agreement shall be observed in the Clothing Industry –
- (a) by all employers who are members of the employer organisations and who are engaged in the Clothing Industry and by all employees who are members of the trade union and who are employed in the said Industry and by any employers' organisation and its members which may be admitted to membership of the Bargaining Council during the currency of this part of the Agreement;
 - (b) in all areas of the Republic of South Africa excluding those areas or Magisterial Districts covered by the scopes of the Bargaining Councils which amalgamated on 23 May 2002 to establish the current National Bargaining Council for the Clothing Manufacturing Industry, including which are detailed below and excluding also those garment knitting establishments which fall within the scope of the main collective agreement for the Northern Region (Knitting) as set out below and also those clothing establishments which fall within the scope of the Main Collective Agreement for the Northern Region (Clothing) and the Fund Collective Agreement for the Northern Region, as detailed below. The exclusions so referred to are as follows:
 - (i) In the Province of the Eastern Cape -
 - (aa) Port Elizabeth, including that portion of Hankey which, prior to the publication of Government Notice No. 1515 of 4 October 1963, fell within the Magisterial District of Port Elizabeth, including that portion which was transferred by the publication of Government Notice No. 1687 of 5 September 1975 to Uitenhage and excluding that portion of Hankey which was transferred by Government Notice No. R. 1974 of 26 September 1980 to Port Elizabeth; and
 - (bb) East London, including that portion which was transferred to Mdantsane by Government Notice No. 1481 of 27 August 1971, excluding those portions of the Ciskei that were transferred to East London by Government Notice No. 1877 of 4 September 1981 and Government Notice No. 1079 of 10 June 1988 and including that portion that was transferred to Ciskei by Government Notice No. 2354 of 5 October 1990.
 - (ii) In the Province of Kwazulu-Natal -

The Magisterial Districts of Chatsworth, Durban, Inanda, Lower Tugela, Pietermaritzburg and Pinetown;
 - (iii) In the Province of the Free State -

The Magisterial Districts of Bloemfontein, Frankfort, Kroonstad, Parys and Vredefort;
 - (iv) In the Province of the Northern Cape -

The Magisterial District of Kimberley;

(v) In the Province of Gauteng -

- (aa) in respect of garment knitting establishments which fall within the scope of application of the Main Collective Agreement for the Northern Region (Knitting) –

The Magisterial Districts of Alberton, Benoni, Germiston, Johannesburg and Roodepoort as well as only those portions of the City of Tshwane, including only those portions of the Southern Pretoria Metropolitan Substructure, the Central Pretoria Metropolitan Substructure and the Northern Pretoria Metropolitan Substructure established in terms of the Premier of the Province of PWV Proclamation No 38 of 1994 published in Provincial Gazette Extraordinary No 5064 of 8 December 1994 as amended by the Premier's Notice No 43 of 1995 published in Provincial Gazette Extraordinary No 66 of 1 September 1995, which previously made up the 'municipal area of Pretoria' as such existed immediately prior to the establishment of the Transitional Metropolitan Council with Transitional Metropolitan Substructures in respect of the Greater Pretoria Metropolitan Area published under aforementioned Proclamation No 38 of 1994;

- (bb) in respect of the scope of application of the Main Collective Agreement for the Northern Region (Clothing) and Fund Collective Agreement for the Northern Region –

The Province of the Transvaal, as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), but only in respect of clothing establishments which fall within the scope of application of the Main Collective Agreement for the Northern Region (Clothing) and the Fund Collective Agreement for the Northern Region;

(vi) In the Province of the Western Cape -

The Magisterial Districts of Bellville, George, Goodwood, Malmesbury (including that portion from which the Magisterial District of Moorreesburg was constituted on 29 November 1985 by Government Notice 2649), Simon's Town, Somerset West, Strand, The Cape, Worcester and Wynberg, including those portions of the Magisterial Districts of Bellville, Goodwood, Simon's Town and Wynberg that were used to create the Magisterial District of Mitchell's Plain on 2 March 1992.

- (c) Insofar as those areas or Magisterial Districts covered by the scopes of the Bargaining Councils which amalgamated on 23 May 2002 to establish the current National Bargaining Council for the Clothing Manufacturing Industry are concerned, should one or more Magisterial Districts have been inadvertently omitted from sub-clause (b) (i) – (vii) above, the overriding test as to whether a particular Magisterial District is excluded from the provisions of this part of the Agreement or not, is whether such Magisterial District was covered by the geographical scope of the Bargaining Councils which amalgamated to form the National Bargaining Council for the Clothing Manufacturing Industry on 23 May 2002.

(2) Notwithstanding the provisions of sub-clause (1), the terms of this part of the Agreement shall -

- (a) apply in respect of employees for whom wages are prescribed in this part of the Agreement; and

- (b) apply to every employer in the Clothing and Garment Knitting sectors as defined herein and to all employees in these sectors save that the terms of this part of the Agreement shall not apply to employees whose basic wages exceed two and a half times the wage rate for a qualified Category B employee or whose occupation is monthly paid and of a managerial, specialist technical or non-production related nature.
- (3) (a) The purpose of this part of the Agreement shall be to establish levels of remuneration and other conditions of employment for employees without seeking to restrict entrepreneurial initiative and employment opportunities.
- (b) Employers employing five (5) or fewer employees shall, upon application to the Council in terms of clause 31 be exempted from this part of the Agreement.
- (c) Where an employer or an employee can satisfy the Council that any of the provisions of this part of the Agreement unduly restrict entrepreneurial initiative and/or employment opportunities such employer or employee may apply to the Council for exemption from those specific provisions in terms of clause 31 of this part of the Agreement.
- (4) Clauses 1 (1) (a), 2 and 34 (5) of this part of the Agreement shall not apply to employers and employees who are not members of the employers' organisations and trade union, respectively.
- (5) The Table of Contents of this Part I of the Main Collective Agreement is as follows:

CLAUSE NO.	DESCRIPTION
1.	SCOPE OF APPLICATION OF THIS PART OF THE AGREEMENT
2.	PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT
3.	DEFINITIONS
4.	REMUNERATION.....
5.	PAYMENT OF REMUNERATION.....
6.	INFORMATION CONCERNING REMUNERATION
7.	DEDUCTIONS AND OTHER MATTERS CONCERNING REMUNERATION.....
8.	HOURS OF WORK AND OVERTIME.....
9.	NIGHT WORK
10.	COMPRESSED WORKING WEEK.....
11.	AVERAGING HOURS OF WORK
12.	PAYMENT FOR WORK ON A SUNDAY.....
13.	PUBLIC HOLIDAYS.....
14.	ANNUAL LEAVE.....
15.	SICK LEAVE.....
16.	MATERNITY LEAVE
17.	FAMILY RESPONSIBILITY LEAVE
18.	PIECE-WORK
19.	COMMISSION WORK
20.	PROHIBITION OF EMPLOYMENT.....
21.	TERMINATION OF CONTRACT OF EMPLOYMENT
22.	SEVERANCE PAY
23.	CERTIFICATE OF SERVICE.....
24.	UNIFORMS, OVERALLS AND PROTECTIVE CLOTHING.....
25.	ATTENDANCE REGISTER.

26.	WRITTEN PARTICULARS OF EMPLOYMENT
27.	LOG BOOK.....
28.	KEEPING THIS PART OF THE AGREEMENT
29.	REGISTRATION OF EMPLOYERS
30.	REGISTRATION OF EMPLOYEES
31.	EXEMPTIONS
32.	COUNCIL FUNDS
33.	AGENTS.....
34.	DISPUTE PROCEDURE
35.	TRADE UNION ACCESS TO WORKPLACE
36.	DEDUCTION/PAYMENT OF TRADE UNION SUBSCRIPTIONS OR LEVIES.....
37.	TRADE UNION'S REPRESENTATIVES ON THE COUNCIL.....
38.	DISPUTES IN REGARD TO ORGANISATIONAL RIGHTS.....
39.	TERMS AND CONDITIONS MORE FAVOURABLE
40.	FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION
41.	ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING
42.	PROVIDENT FUND CONTRIBUTIONS.....
43.	INDUSTRY PROTECTION FUND (Annexure C)
44.	HIV/AIDS (Annexure A)
45.	CONTRACT EMPLOYEES (Annexure D).....
46.	CLOSED SHOP.....
47.	WORKING IN ARRANGEMENTS.....

2. PERIOD OF OPERATION OF THIS PART OF THE AGREEMENT

This part of the Agreement shall come into operation on the same date as fixed by the Minister of Labour in terms of Clause 2 of this Agreement.

3. DEFINITIONS

Any expressions used in this part of the Agreement which are defined in the Act shall have the same meaning as in the Act. Any reference to an Act includes any amendments of such Act, and, unless the contrary intention appears, any reference to one gender shall include the other, further, unless inconsistent with the context -

In this part of the Agreement any word or expression to which a meaning has been assigned in the Basic Conditions of Employment Act, 1997, has the meaning so assigned, unless the context indicates otherwise -

"Act" means the Labour Relations Act, 1995;

"agreement" includes a collective agreement;

"Bespoke Tailoring Industry" means the making of outer garments for and to the measurements of individual persons but excludes the making of tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or are the responsibility of such dealers and the making of all classes of garments including quantity production tailoring made to the order of any department in the national or provincial sphere of government; Transnet and the South African Airways or local government;

"CCMA" means the Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the Labour Relations Act, 1995;

"Clothing Industry" or "Industry" means, without in any way limiting the ordinary meaning of the expression, the Industry in which employers and employees are associated for the making of all classes of the under mentioned items of Apparel /Clothing/Garments:

Belts (manufactured from cloth), Braces, Brassieres, Caps, Collars, Corsetry, Cumberbunds, Gloves, Handkerchiefs, Hats, Hosiery (including ladies' stockings, pantihose and socks), Knitted Outerwear, Knitted Underwear; Nightwear (including pyjamas), Outerwear, Protective wear (including overalls and wetsuits), Scarves, Shirts, Suspenders, Ties (including bowties), and Underwear;

A. and includes:

1. all operations incidental thereto and consequent thereon and all succeeding processes or operations performed in connection therewith carried on by such employers and any of their employees irrespective of the process or method used in such making and irrespective of whether such processes or operations are performed on the premises of such employers, or elsewhere;
2. all types of hand sewing operations (including beading and embroidery), whether by hand and/or machine, on garments and/or parts of garments and irrespective of whether or not such operations are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
3. any of the aforementioned items made for quantity production tailoring made to the order of any government department, provincial administration, S A Airways, Telkom, Transnet or local authority;
4. any part(s) of garments whether by means of a knitting process or otherwise;
5. design room services, irrespective of whether or not such services are provided by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
6. fully-fashioned and/or semi-fashioned garments knitted on circular, flat or full-fashioned machinery;
7. screen process printing on garments and parts of garments performed in a clothing, textile and/or knitting establishment;
8. tailored outer garments for the execution of special measure orders from dealers whose customers' measurements are taken by or on the responsibility of such dealers;
9. the changing of labels, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
10. the making of button holes, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
11. the ironing of garments and/or parts of garments irrespective of whether or not such ironing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work on newly manufactured garments on behalf of such employers and any of their employees;
12. the making up of garments from knitted fabric in the establishment in which the fabric was knitted;
13. the making up of sample garments and/or parts of garments, irrespective of whether or not such operation is performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees;
14. the marking-in and/or cutting of garments or parts of garments, irrespective of whether or not such operation(s) are performed by such employers and any of their employees or by an establishment or persons undertaking such work on behalf of such employers and any of their employees; and
15. the packing of garments and/or parts of garments irrespective of whether or not such packing is done in the establishment in which such items were manufactured or in an establishment or by persons undertaking such work with newly manufactured garments on behalf of such employers and any of their employees.

B. but excludes:

1. Belts, Braces, Garters, Suspenders and Armlets manufactured from leather;
2. Boxing Gloves.
3. retail dressmaking, i.e. the making of single garments to the measurement of individual persons;
4. retail millinery, i.e. the making of hats in shops for sale in such shops and the making of single hats to the measurement of individual persons;
5. Tailor-made garments for individual persons, provided such garments are not manufactured in a factory.

"clothing sector" means the Clothing Industry excluding the Garment Knitting sector;

"commission work" means any system under which an employee receives additional remuneration calculated on the value or volume of sales effected or on the value or number of orders submitted to and accepted by the employer;

"complying employer" means an employer which is registered with the Council and which has registered all permanent and contract employees with the Council, and which has given effect to all collective agreements of the Council which are applicable to it in each of its establishments, or which has received exemption from any collective agreement to the extent of such exemption;

"daily wage" means an employee's weekly wage divided by the number of days on which he or she ordinarily works in a week;

"day" means a period of 24 hours measured from the time when the employee normally commences work;

"emergency work" means work which is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by employees during their ordinary hours of work;

"employee" means an employee as defined in s213 read with s200A of the Act;

"establishment" means any premises or part thereof, on or in connection with which one or more employees are employed in the clothing and garment knitting sectors;

"Exemptions Committee" or "Regional Exemptions Committee" means, for the purposes of this part of the Agreement, the Executive Committee of the Council or the Exemptions Committee established for purposes of considering applications for exemption received in terms of clause 31 of this part of the Agreement;

"experience" means the total period of employment an employee has had in the Bespoke Tailoring or the Clothing and Garment Knitting Industry, whether within the Republic of South Africa or elsewhere, in any capacity other than as a driver of a motor vehicle, or a mechanic, and shall include -

- (a) in the case of a clerical employee, all periods of employment which such employee has had as a clerical employee, irrespective of the trade, industry or undertaking in which such experience was gained;
- (b) in the case of a presser or folder who has been in the laundry trade, seeking employment as a presser, ironer or folder in the clothing industry, half of his or her total experience in the laundry trade;
- (c) in the case of all other employees, each completed period of six months' training in any work similar to that for which wages are set out in this part of the Agreement;

"fully fashioned garment" means a garment of which the form or body, body and sleeve, or sleeves, back and front, are fully shaped on a knitting machine;

"garment knitting sector" means that sector of the industry in which employers and employees are associated for the making only of all classes of hosiery (including socks, ladies' stockings and pantihose), knitted outerwear and knitted underwear;

"hourly wage" means an employee's weekly wage divided by his weekly ordinary hours of work;

"incapacity" means inability to work owing to any sickness or injury other than sickness or injury caused by an employee's own misconduct: Provided that any such inability to work, caused by an accident or scheduled disease for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), shall only be regarded as incapacity during any period in respect of which no disability payment is payable in terms of that Act.

"laundry trade" means the trade in which employers and employees are associated for the purpose of laundering, cleaning or dyeing all types of woven, spun, knitted or crocheted fabrics or articles made from such fabrics, including all operations incidental thereto or consequent thereon, if carried out by such employers and their employees;

"law" includes the common law;

"level B compliance" refers to the status of non-compliant employers who bring themselves within the provisions of clause 34(8). For so long as such employers abide by all the conditions set out therein, no writs of execution in respect of non-compliance will be enforced against them, and they will be entitled to Level B Compliance Certificates from the Council;

"medical practitioner" means -

- (a) a person entitled to practice as a medical practitioner in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No 50 of 1974); or
- (b) a traditional healer;

"midwife" means a person registered or enrolled to practice as a midwife in terms of section 16 of the Nursing Act, 1978 (Act No. 50 of 1978);

"month" means a calendar month;

"monthly wage" means an employee's weekly wage multiplied by four and a third;

"motor vehicle driver" means an employee who is engaged in driving a motor vehicle and for the purpose of this definition "driving a motor vehicle" includes all periods of driving and any times spent by the driver on work connected with the vehicle or the load and all periods during which he or she is obliged to remain at his or her post in readiness to drive.

"new employer" means a business newly established in the clothing and garment knitting sector, during the first 12 months of its existence in the sector; Provided that if an existing business undergoes a change of name or ownership (including a change of directors, members or partners) while largely retaining the same employees and/or clients, it shall not be regarded as a new employer. [See also the proviso to clause 4(1)].

"night work" means work performed after 18:00 and before 06:00 the next day;

"non-metro" means all areas in the Republic of South Africa except those excluded in clause 1(1)(b) of this part of the Agreement;

"ordinary hours of work" means the hours of work prescribed in clause 8 but if by agreement between an employer and the employee the latter works a lesser number of ordinary hours, it means such shorter hours;

"overtime" means the time that an employee works during a day or a week in excess of ordinary hours of work, including overtime worked on a Sunday;

"public holiday" means all public holidays declared as such in terms of the Public Holidays Act, 1994 (Act No. 36 of 1994);

"piece-work" means any system by which earnings are calculated upon the quantity or output of work performed;

"regional chamber" means a Chamber or Sub-Chamber appointed by the Council;

"remuneration" means any payment in money or in kind, or both in money and in kind, made

or owing to any person in return for that person working for any other person, including the State, and "remunerate" has a corresponding meaning;

"retail dressmaking" means the making of single garments for girls and women to the measurement of individual persons, not as special measure orders from dealers whose customers' measurements are taken by or are the responsibility of such dealers;

"retail millinery" means the making of hats in shops for sale in such shops and the making of hats to the measurements of individual persons;

"short time" means a temporary reduction in the number of ordinary hours of work owing to slackness of trade, shortage of raw materials, vagaries of the weather, a breakdown of plant or machinery or buildings that are unfit for use or is or are in danger of becoming unfit for use;

"wage" means that amount of money payable to an employee in terms of clause 4(1) in respect of his or her ordinary hours of work: Provided that if an employer regularly pays an employee in respect of such ordinary hours of work an amount higher than that prescribed in clause 4, it means such higher amount, and "weekly wage" has a corresponding meaning;

"week" in relation to an employee, means the period of seven days within which the working week of that employee ordinarily falls;

"work place" means any place where employees work;

Definitions of the occupations, capacities and duties of employees in the Clothing Industry which encompasses the Clothing and Garment Knitting Sectors thereof:

(a) **Definitions of the occupations, capacities and duties of employees in the Clothing Sector Only**

- (i) **"Category A Employee"** means an employee engaged in any one or more of the following duties or capacities in the clothing sector:

"assistant storeperson" means an employee other than a labourer who, under the supervision of a storeperson, assists in issuing or receiving goods;

"belt operator" means an employee engaged in riveting buckles, bending belt buckles, punching holes for buckles and prongs, pressing prongs into buckles, stapling buckles onto belt;

"belt person" means an employee other than a learner mechanic, engaged in fixing machine belts, oiling bearings, filling oil cans and similar work and assisting the establishment's mechanic;

"boiler attendant (Clothing)" means an employee under the supervision of a foreperson or factory manager, who is responsible for maintaining the water level and steam pressure of a boiler in an establishment, and who may stoke, rake, slice and draw the fire in such boiler;

"box maker" means an employee engaged in operating a cardboard box making machine;

"buckle coverer" means an employee engaged in covering buckles by hand or machine and/or trimming and cleaning belts after lining and belt have been machined together;

"cleaner (Clothing)", means an employee engaged in cutting or trimming off loose ends of cotton left in the garments by previous operators;

"coat-turner" means an employee engaged in turning coat facings out after machining;

"despatch packer" means an employee who, under the supervision of a foreperson or clerical employee, is wholly or mainly engaged in making up orders and in packing goods for transport, including the sealing of cellophane bags by hand or machine, or delivering in connection with the despatch department of an establishment;

"eyelet puncher" means an employee engaged in eyelet punching and letting;

"former" means an employee engaged in putting material between two paper looms (formers) and preparing for steambox in hand or loom pleating process and shall include putting prepared formers in steam box and taking them out again in hand or loom pleating;

"general worker (Clothing)" means an employee who is engaged in one or more of the

following occupations:

- (a) binding, wiring or strapping boxes or bales or other containers;
- (b) carrying or stacking goods;
- (c) delivering letters or messages or light parcels within the factory premises;
- (d) folding or inserting mail, affixing postage stamps or labels for posting;
- (e) general gardening work;
- (f) loading or unloading vehicles, trailers or international standard containers;
- (g) making and serving tea or similar beverages and washing crockery, cutlery and kitchen utensils;
- (h) marking, stencilling or affixing labels on boxes, bales or other containers by hand;
- (i) mixing rubber solution for rubberised garments;
- (j) mopping or washing of toilet facilities;
- (k) operating a duplicating or addressograph or franking machine;
- (l) sweeping with a broom or dusting and wiping down chairs and tables;
- (m) washing or polishing of floors and staircases by machine or by hand.

"hat presser" means an employee operating an automatic hydraulic hat press used solely for shaping hats;

"hat sprayer" means an employee engaged in spray painting hats,

"ironer" means an employee engaged in the ironing of fusible interlinings with hand iron positioning and spot fusing of fusible interlinings with special machine;

"layer-up" means an employee engaged in laying up materials by hand or machine preparatory to cutting;

"marker" means an employee engaged in marking the position of pockets, buttons and/or button holes;

"operator" means an employee who operates a -

- (a) hand operated button-covering machine;
- (b) a shrinking press;
- (c) a semi-automatic or automatic fusing machine;
- (d) semi-automatic press stud-machine; or
- (e) zip machine.

"packer (Clothing)" means an employee engaged in packing garments into boxes or other suitable wrappings or tying them into bundles prior to their being sent to the dispatch department;

"patent turner" means an employee engaged in turning out or over the edges of collars, facings, bands, cuffs, pockets or flaps whether by hand or machine;

"pinner" means an employee engaged in pinning unfinished or finished garments;

"pleater" means an employee engaged in guiding material with paper through automatic pleating machine and shall include raking material out of looms in hand or loom pleating process;

"plain sewer (Clothing)" means an employee engaged solely in performing by hand one or more of the following operations:-

- (a) tacking permanent turn-ups;
- (b) tacking waistband linings;
- (c) sewing on hooks and eyes, tickets or press studs;
- (d) fastening catch in tops of trousers;
- (e) sewing on buttons;
- (f) making and sewing on hangers;
- (g) felling crutch linings in trousers;
- (h) felling bottoms and waist-band linings, and various odds and ends of sewing;
- (i) felling necks of vests;

- (j) fastening edge stays and odds and ends of sewing;
- (k) felling bottoms of linings or seams of same already basted into position;
- (l) felling bindings;
- (m) fastening facings inside already basted in position;

"rubberiser" means an employee engaged in rubberising, i.e. waterproofing processes or the work of smearing rubber solution upon seams or edges and rolling them over with a small wooden hand roller, cleaning off any rubber solution, painting seams or oilskins and waterproof hats, and shall include spreading of P V C (plastic solution) in waterproofing process or on raincoats and protective wear and waterproofing seams;

"sorter (Clothing)" means an employee engaged in sorting out garments or parts of garments for the various operations;

"stamper" means an employee engaged in stamping the size or identity work numbers on garments or parts of garments, or on any article connected with packaging or despatching of garments;

"swatch cutter" means an employee engaged in cutting travellers' swatches;

"winder (Clothing)" means an employee engaged in the winding or unwinding of lace, embroidery, braids, ribbons, bindings and elastic;

"under-presser" means an employee other than a presser employed in pressing processes.

(ii) **"Category B Employee"** means an employee engaged in one or more but not limited to the following duties or capacities in the clothing sector:

"baster" means an employee engaged in hand sewing in setting a coat or parts of a coat into position preparatory to other operations or underbasting, i.e. hand sewing of linings of coats into position preparatory to sewing the edge seams;

"bowmaker" means an employee engaged in making bows for dresses;

"clicker" means an employee who cuts out parts of garments from dyes using a mechanical or hydraulic press;

"conveyor-feeder" means an employee responsible for feeding prepared parts of garments on to a conveyor for further operations and who may be assisted by one or more sorters;

"cutter (Clothing)" means an employee who cuts out all articles of wearing apparel, linings, trimmings or interlinings by any method;

"examiner (Clothing)" means an employee who examines finished garments for quality;

"factory clerk" means an employee who is engaged in one or more of the following duties or capacities:

- (a) calculating piece-work or bonus payments from production schedules;
- (b) checking attendance records or recording particulars of employees at work or absent from work; preparing wage cards or envelopes for subsequent use by another employee;
- (c) checking or recording for production control;
- (d) checking invoices or other documents and copying same by machine or hand;
- (e) issuing machine parts, tools, oil and other equipment from a workshop store and/or recording same;
- (f) issuing material, lining, canvas, trimming, buttons, cotton and zips to the different departments of an establishment and/or recording same;
- (g) issuing trimming, lining, cotton and zips to employees of an establishment from a sub-store and/or recording same;
- (h) receiving into stock, goods, material, trimming, tools and other equipment and checking goods received against specifications of goods ordered such as quantity, size and quality;
- (i) recording particulars of materials or general stores consumed or to be consumed or keeping stock records;
- (j) recording particulars of waste;

Provided that a calculator may be used in carrying out one or more of the above duties as well as the filing of documents;

"finisher" means an employee who performs one or more of the following operations by hand:

- (a) putting pads or wadding into shoulders of coats;
- (b) fastening or serging sleeve-heads;
- (c) wadding sleeve-heads;
- (d) felling silk facings already basted into position;
- (e) making button-holes by hand;
- (f) felling sleeve-head linings, holding such in position with the fingers;
- (g) beader or embroiderer by hand.

"fitter-up" means an employee who takes the outside of garments together with the cut out linings (called trimmings) and adjusts the outside and insides together accurately so that parts may go forward to the machine to be put together correctly;

"folder" means an employee engaged in the folding of garments by machine or by hand and buttoning up of garments;

"lace machinist" means an employee who operates an automatic lace, embroidery or monogramming machine;

"lay copier" means an employee engaged in placing of numbered patterns on a lay to conform with a numbered photograph, diagram or plan;

"NES" means an employee not elsewhere specified in this part of the Agreement;

"pleating setter" means an employee engaged in setting of pleats on automatic pleating machines;

"presser (Clothing)" means an employee employed in pressing the finished garment by hand or machine;

"seam welder" means an employee who joins seams by any method other than by a thread-sewing machine;

"sewing machinist (Clothing)" means an employee who performs by sewing machine any operation in the making of clothing;

"shaper (Clothing)" means an employee engaged in shaping the lapels and collars of coats preparatory to under basting;

"sloper" means an employee engaged in marking or trimming the shape of the necks in the shirt section, preparatory to other operations.

(b) **Occupations, capacities and duties of employees in the Garment Knitting Sector Only:**

- (i) **"Category C Employee"** means an employee engaged in any one or more of the following capacities or duties in the garment knitting Sector:

"assistant dyer" means an employee who, under the supervision of a dyer, is engaged in mass-measuring or mixing colour substances or attending or operating machines used in the dyeing or finishing processes;

"colouring measurer" means an employee who, under the supervision of a dyer, mass-measures dye-stuff or other chemicals;

"handyperson" means an employee in a garment knitting establishment who does minor repairs or adjustments to machinery or equipment, other than machinery or equipment directly used in the manufacture of the products of an establishment, and who may effect minor repairs or renovations to buildings but who does not perform work normally done by an artisan;

"knitter" means an employee who operates one or a set of knitting machines and who may change needles, sliders and sinkers and straighten tricks, including chain and card control and running on after press-offs;

"knitting cutter " means an employee who by means of a power-driven cutting machine, knife or shears is engaged in cutting garment lengths, fronts, backs or sleeves of fully fashioned garments or trimmings, who marks or cuts attachments, points of necks or armholes or trimmings and who may use a template for this purpose;

"linker" means an employee who is engaged in operating a linking machine for toe-closing of stockings or socks or for joining parts of fully fashioned garments or attaching trimmings to fully fashioned garments or parts of garments;

"loader" means an employee engaged in the transferring of stitches onto the needles of a bar or magazine;

"mender" means an employee who is engaged in repairing knitting faults in garments or parts of garments, blanks, stockings or socks;

"plain sewer (Knitting)" means an employee engaged solely in performing by hand one or more of the following operations:

- (a) tacking permanent turn-ups; tacking waistband linings;
- (b) sewing on hooks and eyes, tickets and/or press studs;
- (c) fastening catch in tops of trousers;
- (d) sewing on buttons;
- (e) making and sewing on hangers;
- (f) felling crutch linings in trousers;
- (g) felling bottoms and waist-band linings, and various odds and ends of sewing;
- (h) felling necks of vests;
- (i) fastening edge stays and odds and ends of sewing;
- (j) felling bottoms of linings or seams of same already basted into position;
- (k) felling bindings and fastening facings inside already basted in position.

"sewing machinist (Knitting)" means an employee who by means of a sewing machine is engaged in any operation in the making of clothing including button, buttonhole and hemming machinist and shall include an employee who operates an overlocking machine;

"warper" means an employee who prepares warps from cones or bobbins for a warp knitting or similar machine and prepares the beam;

"warp knitter" means an employee operating one or a set of warp knitting machines and who may correct faults, change or straighten needles, fill bars or make minor adjustments to such machines.

- (ii) **"Category D Employee"** means an employee engaged in any one or more of the following capacities or duties in the garment knitting sector division:

"backwinder" means an employee who recovers yarn from a knitted article by winding it back onto a bobbin, comb, magazine or spool;

"boiler attendant (Knitting)" means an employee who, under supervision, maintains the water level and steam pressure in a boiler and who may make, maintain and draw the fire in such boiler;

"cleaner (Knitting)" means an employee engaged in cutting or trimming off loose ends of cotton or cloth left on garments or parts of garments by previous operators;

"despatch packer" means an employee who, under the supervision of a despatch clerk, is engaged in packing, assembling, marking, addressing and mass-measuring goods for despatch or delivery;

"draw threader" means an employee who separates knitted articles by removing the drawthread;

"examiner (Knitting)" means an employee who examines finished garments for quality;

"former" means an employee who is engaged in placing or removing stockings, socks or garments on or from forms;

"general worker (Knitting)" means an employee who is engaged in one or more of the following duties:

- (a) binding, wiring or strapping boxes or bales or other containers;
- (b) carrying or stacking goods;
- (c) cutting up or otherwise destroying rejected hosiery or fabrics;
- (d) delivering letters or messages or light parcels within the factory premises;
- (e) folding or inserting mail, affixing postage stamps or labels for posting;
- (f) general gardening work;
- (g) lime-washing or colour-washing buildings or other structures;
- (h) loading or unloading vehicles, trailers or international standard containers;
- (i) making or maintaining fires, or removing refuse or ashes;
- (j) making and serving tea or similar beverages and washing crockery, cutlery and kitchen utensils;
- (k) marking, stencilling or affixing labels on boxes, bales or other containers by hand;
- (l) mixing rubber solution for rubberised garments;
- (m) mopping or washing of toilet facilities;
- (n) operating a duplicating or addressograph or franking machine;
- (o) sweeping with a broom or dusting and wiping down chairs and tables;
- (p) washing or polishing of floors and staircases by machine or by hand.

"operator" means an employee who is an operator of a -

- (a) calendar machine;
- (b) slitting machine;
- (c) brushing, raising or cropping;
- (d) dye machine;
- (e) dyeing or hydro-extracting machine.

"packer (Knitting)" means an employee engaged in closing or sealing parcels and cartons prior to despatch and delivery;

"presser (Knitting)" means an employee who is engaged in the ironing or pressing of finished garments by hand or machine, excluding open steam pressing or boarding of garments on automatic continuous steam belts;

"runner" or "floorwalker" means an employee engaged in carrying garments or parts of garments from one place to another within the workplace;

"sampler" means an employee engaged in the making up of sample cards;

"seamer" means an employee who is engaged in joining seams in stockings or socks by means of a seaming machine;

"sorter (Knitting)" means an employee who is engaged in sorting or grading hosiery into pairs according to length and size or sorting trimmings, materials or parts of fully fashioned garments;

"turner" means an employee engaged in turning out or over the edges of collars, facings, bands, cuffs, pockets or flaps whether by hand or machine;

"yarn changer" (pig tailor) means an employee who is responsible for loading and unloading the yarn on knitting machines, or an employee who brings yarn to and from the machines, removes fabric and cleans the machines and may stop the machine to change the yarn and may restart the machine only if he or she stopped the machine for the purpose of changing the yarn and shall not carry out any other functions of the knitting machine operator.

"yarn winder" means an employee who is engaged in operating a yarn-winding machine;

(c) **Occupations, capacities and duties of employees in the Clothing and Garment Knitting Sectors:**

"**Category E Employee**" means an employee engaged in any one or more of the following duties or capacities:

"**assistant foreperson**" means an employee who under the supervision of a foreperson, is in charge of the employees, other than clerks, storepersons and dyers, in an establishment, who exercises control over such employees and who is responsible to the foreperson for the efficient performance by them and their duties;

"**dyer**" means an employee who is responsible for and engaged in dyeing or other finishing processes and who decides on the nature, mass, blending and application of the dyes or other chemicals to be used;

"**mechanic**" means an employee engaged in the installation, repair and maintenance of boilers and machinery;

"**pattern maker**" means an employee engaged in designing or making master patterns;

"**supervisor**" means an employee who, under the supervision of a foreperson is in charge of a group of employees in an establishment and who is responsible for the efficient performance by them of their duties and who may supervise set leaders or team leaders.

(d) **Other occupations, capacities and duties of employees in the Clothing and Garment Knitting Sectors:**

"**assistant head cutter**" means a person who assists the head-cutter in creating designs, styles, fashions and in making patterns, grading patterns and planning cutting jobs;

"**band knife cutter**" means an employee who cuts out all articles of wearing apparel, linings, trimmings or interlinings with a band knife;

"**clerk**" means an employee who is engaged in:

- (a) writing, typing and filing;
- (b) operating a calculating machine, computer terminal, punch-card machine or accounting machine;
- (c) any other clerical work and includes a cashier, despatch clerk, storeperson, shipping clerk, invoice clerk, workstudy clerk and telephone switchboard operator but does not include any other class of employee elsewhere defined, even though clerical work may form part of such an employee's work.

"**foreperson**" means an employee who carries the responsibility for the correct and efficient execution of the work entrusted to his/her care in a factory or a department of a factory;

"**head cutter**" means a person who actively supervises the cutting room and designs, styles and fashions makes patterns, grades patterns and who plans cutting jobs;

"**motor vehicle driver**" means an employee who is engaged in driving a motor vehicle and for the purpose of this definition "driving a motor vehicle" includes all periods of driving and any times spent by the driver on work connected with the vehicle or the load and all periods during which he or she is obliged to remain at his or her post in readiness to drive;

"**watchperson**" means an employee engaged in guarding premises, buildings or other property.

4. REMUNERATION

- (1) **Minimum wages:** The minimum wages which an employer shall pay to employees shall be as specified herein: Provided that if a new employer, as defined in clause 3, has been engaged in the industry for a period of not more than 12 months, such wages may be reduced by not more than 10 per cent during such period, whereafter the minimum wages specified herein shall become payable:

I -15

Category / Occupation		In the Magisterial Districts of Camperdown, uMzinto, Paarl, Stellenbosch and Uitenhage (Non-Metro A)		All Other Areas (Non-Metro B)	
		Wage rate per week from 01 Sep 2013 to 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	Wage rate per week from 01 Sep 2013 to 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
Category A					
	0 - 6 months	627.50	502.00	566.50	453.00
	Thereafter	671.00	537.00	599.50	479.50
Category B					
	0 - 6 months	626.00	501.00	565.00	452.00
	7 - 12 months	656.50	525.00	587.50	470.00
	13 - 18 months	687.00	549.50	609.50	487.50
	Thereafter	727.00	581.50	637.50	510.00
Category C					
	0 - 6 months	647.50	518.00	569.00	455.00
	7 - 12 months	712.50	570.00	615.50	492.50
	13 - 18 months	777.50	622.00	663.50	531.00
	19 - 22 months	841.50	673.00	715.00	572.00
	Thereafter	905.50	724.50	767.00	613.50
Category D					
	0 - 6 months	647.50	518.00	569.00	455.00
	7 - 12 months	695.50	556.50	604.00	483.00
	13 - 18 months	759.50	607.50	639.00	511.00
	19 - 22 months	790.50	632.50	674.50	539.50
	Thereafter	890.50	712.50	755.50	604.50
Category E					
	0 - 6 months	679.50	543.50	592.50	474.00
	7 - 12 months	755.50	604.50	649.00	519.00
	13 - 18 months	842.00	673.50	716.00	573.00
	19 - 22 months	927.50	742.00	786.00	629.00
	Thereafter	1 021.00	817.00	859.00	687.00
Band Knife Cutter					
	0 - 6 months	622.50	498.00	550.50	440.50
	7 - 12 months	671.00	537.00	585.50	468.50

Category / Occupation		In the Magisterial Districts of Camperdown, uMzinto, Paarl, Stellenbosch and Uitenhage (Non-Metro A)		All Other Areas (Non-Metro B)	
		Wage rate per week from 01 Sep 2013 to 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%	Wage rate per week from 01 Sep 2013 to 31 Aug 2014	New Employees on Incentivised Scheme Effective 1 September 2013 = 80%
	13 - 18 months	717.50	574.00	620.50	496.50
	19 - 22 months	768.50	615.00	657.50	526.00
	Thereafter	846.00	677.00	720.00	576.00
Clerical					
	0 - 6 months	638.00	510.50	562.00	449.50
	7 - 12 months	699.00	559.00	607.00	485.50
	13 - 18 months	748.00	598.50	643.00	514.50
	Thereafter	859.00	687.00	729.00	583.00
Assistant Head Cutter		990.00	792.00	835.50	668.50
Head Cutter		1 196.00	957.00	1 001.00	801.00
Foreperson		1 072.50	858.00	930.50	744.50
Watchperson		745.00	596.00	640.00	512.00
Driver 1 (454kg)		710.00	568.00	614.50	491.50
Driver 2 (454 - 2722kg)		760.50	608.50	651.50	521.00
Driver 3 (2722 -4540kg)		858.00	686.50	728.50	583.00
Driver 4 (4540kg)		1 002.00	801.50	845.00	676.00

NB: All employers who employed staff on 2011/2012 New Entry Wage Dispensation must, with the coming into effect of this Agreement, increase the Weekly Wage for those employees by R58.50 Across-the-Board in both Non-Metro A and Non-Metro B.

- (2) The metro and non-metro B wage differential shall be narrowed, relative to the KZN metro qualified machinist rate (not the incentivised wage), as follows:

with effect from 1 September 2013:	to 71%
with effect from 1 September 2014:	to 73%
with effect from 1 September 2015 and thereafter):	to 75%

- (3) New Employees

- 3.1 New employees shall be paid a weekly wage of 80% of the rate in non-metro and all other areas, subject to the following provisions:

- 3.1.1 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a period of 3 years.
- 3.1.2 The provision is only applicable to compliant companies.
- 3.1.3(a) The new entry-level wage provision will continue in force and effect as an industry-wide provision after the *31st August 2014* if there has been an increase in employee strength of compliant employers in the industry of at least 15% as at *31st March 2014*, monitored on a bi-annual basis.
- (b) The bi-annual benchmark monitoring shall be measured against the following schedule of new employment growth:
- | | |
|-------------------|--------------|
| 1 March 2012: | 3% increase |
| 1 September 2012: | 6% increase |
| 1 March 2013: | 9% increase |
| 1 September 2013: | 12% increase |
| 1 March 2014: | 15% increase |
- 3.1.4 It is only applicable to those compliant companies who were in existence and operational as at 1 June 2011.
- 3.1.5 All other provisions of the main agreement shall be applicable to new employees.
- 3.1.6 The closed shop shall be applicable to all new employees.
- 3.1.7(a) The employee strength to determine whether or not there has been an increase in employee strength will be measured by comparing the employee strength of compliant employers whose businesses are registered with the bargaining council on the *1st June 2011*, as per clause 3.1.3, and to that of the employee strength of compliant employers whose businesses are registered with the bargaining council on the *31st March 2014*, i.e. a period of 30 months following the implementation of this *Agreement*.
- (b) In the event that the employee strength does not increase as per the provisions of this *Agreement* and more specifically, the provisions of *Clause 3.1.3* above, the provisions of the new-entry wage provision will terminate.
- (c) Upon such termination of the application of the new entry level wage provision, the wages of all employees earning the new-entry wage will be increased to the full applicable gazetted wage for all job categories from the first pay week following the *31st August 2014*, unless the parties during the 2014/2015 round of annual or other negotiations agree otherwise or agree to an alternative to address any further job losses or the absence of job growth in the industry.
- 3.1.8 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to employ employees at the rates specified in sub-clause 3.1.3 (a) above.
- 3.1.9 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.

- 3.1.10 Qualified employees shall be employed at the qualified new entry rate, subject to sub-clause 3.1.1.
- 3.1.11 Effective 1st September 2011, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.

(4) **Incentivised Wage Rates**

The 'new entry wage rates' provisions as specified in clause 4 of the 2011/2012 party-to-party substantive agreement shall be abolished and replaced with the following incentivised wage rates provisions, applicable to new employees only:

- 4.1 With effect 1 September 2012, new employees shall be paid a guaranteed wage of no less than 80% of the normal qualified gazetted wage rate applicable to current employees, subject to the following provisions:
- 4.2 New employees are those persons with no previous working experience in the industry and shall include those persons with previous work experience but who have not been employed in the industry for a minimum period of 3 years, unless the applicant employee agrees otherwise with his/her prospective employer.
- 4.3 The guaranteed wage rate as specified in sub-clause 4.1 above shall be supplemented with an incentivised wage component which shall allow new employees to earn up to 100% or more of the qualified rate, provided the employee(s) meets the required performance standards as contained in the plant level incentive scheme. This incentive shall be applicable to all new employees engaged under the incentivised wage provisions and employed after 1 September 2012, once a national framework agreement governing the incentive portion has been agreed.
- 4.4 The provisions of clause 4 of this circular is only applicable to companies which are registered with the National Bargaining Council for the Clothing Manufacturing Industry of South Africa.
- 4.5 All other provisions of the industry's Main Agreement shall be applicable to new employees.
- 4.6 The closed shop shall be applicable to all new employees.
- 4.7 Employers shall not embark on retrenchment exercises, where the intent of such retrenchment is to re-employ employees at the rates specified in sub-clause 4.1 above
- 4.8 Employers will ensure that short time arrangements are at all times fairly and equitably distributed across a workplace's employees in all job categories affected by short time arrangements.
- 4.9 Qualified employees shall be employed at the qualified rate, subject to sub-clause 4.2.
- 4.10 Current employees employed in terms of the new entry rate provision envisaged in the 2011/2012 party to party agreement, which was subsequently extended to non-parties and who were so employed prior to 1 September 2012 shall by exemption be ring-fenced on those rates plus the annual increases, and subject

to the companies at which they are employed meeting the compliant employment growth targets as set out in the 2011/2012 wage agreement.

- 4.11 Effective 1st September 2012, all retrenched employees will, within a period of 12 months of having been retrenched, be given preferential employment in the same job category at the same wage rate which was applicable at the date of the employee's retrenchment or any higher wage rate which may have been gazetted and become applicable to the affected employee's job category after such date of retrenchment.
- 4.12 The parties shall negotiate a national framework agreement at national bargaining council level, to give enabling effect to the plant level incentivised wage component as contemplated in sub-clause 4.3 of this agreement. This shall be finalised within a period of 4 months with effect from 1 October 2012 (excluding the annual shutdown period). Thereafter, companies who qualify for the provisions of clause 2 of this agreement and who wish to implement it shall have a 2 month period to conclude plant-level incentive arrangements in terms of the provisions of the national framework agreement.
- 4.13 The deadlock breaking mechanism for the national framework agreement is either binding interest arbitration or, at the end of the prescribed period, the entire 80% dispensation falls away, unless other forms of deadlock breaking mechanisms are agreed between the parties.
- 4.14 Should the 80% dispensation fall away in consequence of the provision in sub-clause 4.13 above, new employees employed on the incentive wage provisions should be paid 100% of the applicable agreement rate.
- 4.15 The deadlock breaking mechanism for operationalising the incentive component at plant level shall consist firstly of a facilitation process by a panel of experts jointly appointed by the employer and trade union parties to this agreement and if not resolved, by an advisory award by the panel, unless other forms of deadlock breaking mechanisms are agreed to between the parties.
- 4.16 The parties agree that the only outstanding issue pertaining to the national incentivised framework agreement is the deadlock breaking mechanism. The Parties agree to finalise this matter within two (2) weeks from the date of signing this agreement, failing which the provision of sub-clause 4.13 above will become effective.
- (5) Basis of contract - For the purposes of this clause the contract of employment of an employee shall be on a weekly basis, and except as provided for in clause 7(4) or where law otherwise permits, he or she shall be paid in respect of a week not less than the full weekly wage prescribed in sub-clause (1), read with the definition of "wage" in clause 3 and with sub-clause (5), for an employee of his or her category in the area in which he or she works. The provisions of this sub-clause are not intended to have the effect that permanent employees are deemed to be, or be regarded as, fixed term contract employees.
- (6) Differential wage - An employer who requires or permits a member of one category of employees to perform work for longer than one hour on any day, either in addition to his or her own work or in substitution therefore, in another category for which:
- (a) a wage higher than that of his or her own category is set out in sub-clause (1), shall pay to such employee in respect of that day, not less than the daily wage calculated at the higher rate; or
- (b) a rising scale of wages terminating in a wage higher than that of his or her own category is set out in sub-clause (1), shall pay to such employee in respect of

that day not less than the daily wage calculated on the notch in the rising scale immediately above the wage which the employee was receiving for his or her ordinary work: Provided that -

- (i) this sub-clause shall not apply where the difference between categories in terms of sub-clause (1) is based on experience;
 - (ii) unless expressly otherwise provided in a written contract between an employer and an employee, nothing in this part of the Agreement shall be so construed as to preclude an employer from requiring an employee to perform work of another category for which the same or a lower wage is prescribed.
- (7) Calculation of wages— The hourly, daily or monthly wage of an employee shall be calculated as indicated in the definitions of these expressions in clause 3.
- (8) Dual Operations – Where an establishment performs operations in both the garment knitting and clothing sectors of the Industry, the wage schedule to be applied in respect of the following occupations namely-

(a) boiler attendant	:	Categories	A + D
(b) cleaner	:	"	A + D
(c) cutter	:	"	B + C
(d) examiner	:	"	B + D
(e) general worker	:	"	A + D
(f) packer	:	"	A + D
(g) plain sewer	:	"	A + C
(h) presser	:	"	B + D
(i) sewing machinist	:	"	B + C
(j) sorter	:	"	A + D

shall be that of the sector in respect of which the majority of employees are employed at the establishment.

- (9) Notwithstanding anything to the contrary herein, the wage of an employee who, immediately prior to the date on which this part of the Agreement comes into operation, is in receipt of a wage higher than that specified for the class of work in which he is engaged shall, with effect from the date on which this part of the Agreement comes into operation, be increased by an amount not less than the difference between the wage as agreed by the Parties as at 1 September 2013 and the wage specified for the same class of work in the agreement in force immediately prior to that date.
- (10) Annual Bonus -
- (a) Each employee shall be paid an annual bonus on the day of his employer's annual closure in December each year, equivalent to 1,0% of his annual basic prescribed wage (excluding overtime earnings and production bonuses) calculated from 1 January to 31 December. A pro rata share thereof shall be paid to an employee who leaves employment before 31 December.
 - (b) The bonus is inclusive of and not additional to any annual bonus paid by an employer.
 - (c) An employee shall not suffer a reduction in the amount of the annual bonus as a result of periods of authorised absence from work.

5. PAYMENT OF REMUNERATION

- (1) An employee, except as provided for in clause 14(6) and (7) shall be paid:

- (a) weekly or fortnightly;
- (b) in cash, by cheque or by direct deposit into an account designated by the employee, and in South African currency;
- (c) remuneration in cash or by cheque -
 - (i) at the workplace or at a place agreed to by the employee;
 - (ii) during the employee's working hours or within 15 minutes of the commencement or conclusion of such hours;
- (d) remuneration not later than seven days after -
 - (i) the completion of a period for which the remuneration is payable;
 - (ii) the termination of the contract of employment.
- (e) payment to employees shall not be for periods longer than fortnightly, unless otherwise agreed between the employer and the trade union at plant level. Such agreement shall be in writing.

6. INFORMATION CONCERNING REMUNERATION

- (1) The remuneration shall be in a sealed envelope which shall become the property of the employee, on which must be recorded or which must be accompanied by, a statement showing:
 - (a) the employer's name and address;
 - (b) the employee's name and occupation;
 - (c) the period in respect of which payment is made;
 - (d) the employee's rate of remuneration and overtime rate;
 - (e) the number of ordinary hours worked by the employee during that period;
 - (f) the number of overtime hours worked by the employee during that period;
 - (g) the number of hours worked by the employee on a paid holiday or on a Sunday;
 - (h) the employee's wage;
 - (i) details of any other remuneration arising out of the employee's employment;
 - (j) details of any deductions made; and
 - (k) the actual amount paid to the employee.
- (2) The particulars set out in sub-clause (1) may be coded on the envelope and such code shall be fully set out and explained in an accompanying notice or in a notice kept posted in a conspicuous place in the establishment, accessible to all employees affected thereby.
- (3) Where the remuneration is deposited into the employee's account the employer shall hand to him or her the statement referred to in sub-clause (1).

7. DEDUCTIONS AND OTHER MATTERS CONCERNING REMUNERATION

- (1) Training fee - Subject to any other law no payment by or on behalf of an employee shall be accepted by an employer, either directly or indirectly, in respect of the employment or training of that employee.
- (8) Purchase of goods - An employer shall not require his or her employee to purchase any goods from him or her or from any shop, place or person nominated by him or her.
- (3) Accommodation - Subject to any other law, an employer shall not require his or her employee to accept accommodation, meals or rations from him or her or from any person or at any place nominated by him or her.
- (4) Deductions - An employer shall not levy any fines against his or her employee nor make any deductions from the employee's remuneration other than the following:
 - (a) With the written consent of the employee, a deduction for any holiday, sick, medical, insurance, savings, provident or pension fund, or in respect of subscriptions to a trade union;
 - (b) A deduction of any amount which an employer by law or order of any competent court is required or permitted to make;
 - (c) Whenever the ordinary hours of work are reduced because of short-time, a deduction not exceeding the amount of the employee's hourly wage in respect of each hour of such reduction: Provided that -
 - (i) no deduction shall be made in the case of short time arising from slackness of business or a shortage of raw materials or packing materials unless the employer has given his or her employee notice on the previous work-day of his or her intention to reduce the ordinary hours of work;
 - (ii) no deduction shall be made in the case of short time owing to vagaries of the weather or a breakdown of plant or machinery or a breakdown or threatened breakdown of buildings, in respect of the first hour not worked, unless the employer has given his or her employee notice on the previous day that no work will be available;
 - (d) with the written consent of an employee, a deduction of any amount which the employer has paid or has undertaken to pay to:
 - (i) any banking institution, building society, insurance business, registered financing institution, local authority in respect of a payment on a loan granted to such employee to acquire a dwelling;
 - (ii) any organisation or body in respect of the rent of a dwelling or accommodation in a hostel occupied by such employee if such dwelling or hostel is provided through the instrumentality of such organisation or body wholly or partly from funds advanced for that purpose by the State or a body referred to in subparagraph (i);
 - (e) with the written consent of an employee, a deduction towards the repayment of any amount loaned or advanced to him or her by the employer: Provided that any such deduction shall not exceed one quarter of the total remuneration due to the employee on the pay-day concerned: Provided further that no such deduction shall be made in respect of any period during

which the employee's wage is reduced in terms of paragraph (d).

8. HOURS OF WORK AND OVERTIME

- (1) **Exclusions -**
- (a) Sub-clauses (3), (4) (5) and (6) shall not apply to an employee while he or she is engaged on emergency work.
 - (b) Sub-clause (3) and (4) shall not apply to a watchperson: Provided that if a meal interval is granted to such an employee the time taken up by such interval shall be deemed to be time during which he or she worked;
 - (c) Sub-clause (4) shall not apply to a driver or an employee who assists such driver on the vehicle;
 - (d) Sub-clause (3), (4), (5) and (6) shall not apply to an employee who is remunerated according to an agreement under clause 19.
- (2) **Ordinary hours of work -** An employer shall not require or permit an employee to work more ordinary hours of work than:
- (a) 45 in any week from Monday to Saturday, inclusive, and
 - (b) subject to subparagraph (i), in the case of an employee who normally works on:
 - (aa) not more than five days in a week, nine on any day;
 - (bb) more than five days in a week, eight on any day, unless the hours on one day do not exceed five.
- (3) **Meal Intervals-** An employer shall not require or permit an employee to work for more than five hours continuously without a meal interval of not less than one hour, during which interval such employee shall not be required or permitted to perform any work, and such interval shall not form part of the ordinary hours of work or overtime: Provided that:
- (a) such interval may be reduced to not less than half an hour by written mutual agreement between an employer and an employee;
 - (b) periods of work interrupted by intervals of less than one hour, except when proviso (a) or (e) applies, shall be deemed to be continuous;
 - (c) if such interval is longer than one hour any period in excess of one and one quarter hours shall be deemed to be time worked;
 - (d) only one such interval during the ordinary hours of work of an employee on any day shall not form part of the ordinary hours of work;
 - (e) when on any day by reason of overtime worked an employer is required to give an employee a second meal interval, such interval may be reduced to not less than 15 minutes;
 - (f) a driver who during such interval does not work other than being or remaining in charge of the vehicle or its load shall for the purpose of this sub-clause be deemed not to have worked during such interval;
 - (g) such interval need to be granted to a shift worker during his or her ordinary hours of work on any shift if he or she is given the opportunity during such hours of having a meal while at his or her post in terms of any law.

- (4) **Rest intervals** – An employer shall grant to each of his or her employees a rest interval of not less than 10 minutes as nearly as practicable in the middle of each first work period and second work period of the day, and during such interval such employee shall not be required or permitted to perform any work, and such interval shall be deemed to be part of the ordinary hours of work of such employee: Provided that where an employer grants his or her employee a rest interval of not less than 20 minutes during each morning work period, the afternoon rest interval may be dispensed with.

Except as provided for in sub-clause (3) and (4) all hours of work of an employee on any day shall be consecutive.

(5) **Daily and weekly rest periods -**

(a) An employer must allow an employee:

- (i) a daily rest period of at least twelve consecutive hours between ending and recommencing work; and
- (ii) a weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include Sunday.

(b) A daily rest period in terms of sub-clause 5(a) may, by written agreement be reduced to 10 hours for an employee -

- (i) whose meal interval lasts for at least three hours; or
- (ii) who is a driver of a motor vehicle or an employee assisting on or accompanying a motor vehicle driven over a distance of more than 480 kms in one direction from the point of departure to the destination, if the ordinary hours of work of such a driver or other member of the vehicle staff, together with any overtime worked, do not exceed 14 hours on any day.

(c) Despite sub-clause (a)(ii), an agreement in writing may provide for -

- (i) rest period of at least 60 consecutive hours every two weeks; or
- (ii) an employee's weekly rest period to be reduced by up to eight hours in any week if the rest period in the following week is extended equivalently.

(6) **Overtime** - An employer shall not require or permit an employee to work overtime otherwise than in terms of an agreement concluded by him or her with the employee and such overtime shall not exceed:

- (a) three hours on any day; or
- (b) 10 hours in any week;

Provided that this limitation shall not apply in respect of the employees referred to in sub-clause (5)(b)(ii).

(7) **Payment for overtime** - An employer shall pay an employee, who works overtime, at a rate of not less than one and a half times his or her hourly wage.

9. NIGHT WORK

(1) An employer may only require or permit an employee to perform night work, if so

agreed and if:

- (a) the employee is entitled to and shall receive payment of an allowance, which may be a shift allowance, or by a reduction of working hours; and
 - (b) transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.
- (2) An employer who requires an employee to perform work on a regular basis after 23:00 and before 06:00 the next day must:
- (a) inform the employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee understands:
 - (i) of any health and safety hazards associated with the work that the employee is required to perform; and
 - (ii) of the employee's right to undergo a medical examination in terms of paragraph (b);
 - (b) at the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning those hazards:
 - (i) before the employee starts, or within a reasonable period of the employees starting, such work, and
 - (ii) at appropriate intervals while the employee continues to perform such work; and
 - (iii) transfer the employee to suitable day work within a reasonable time if
 - (iv) the employee suffers from a health condition associated with the performance of night work; and
 - (v) it is practicable for the employer to do so.
- (3) For the purposes of sub-clause (2), an employee works on a regular basis if the employee works for a period of longer than one hour after 23:00 and before 06:00 at least five times per month or 50 times per year.

10. COMPRESSED WORKING WEEK

- (1) An agreement in writing between an employer and an employee may require or permit the latter to work up to twelve hours in a day, inclusive of the meal intervals required in terms of clause 8(3), without receiving overtime pay.
- (2) An agreement in terms of sub-clause (1) may not require or permit an employee to work -
 - (a) more than 45 ordinary hours of work in any week;
 - (b) more than ten hours' overtime in any week; or
 - (c) on more than five days in any week.

11. AVERAGING HOURS OF WORK

- (1) Despite clause 8 (2) and clause 8 (7), the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months.
- (2) An employer may not require or permit an employee to work more than:
 - (a) an average of 45 ordinary hours of work in a week over the agreed period;
 - (b) an average of five hours' overtime in a week over the agreed period.

12. PAYMENT FOR WORK ON A SUNDAY

- (1) An employer must pay an employee who works on a Sunday at double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer must pay the employee at one and one-half times the employee's wage for each hour worked.
- (2) If an employee works less than the employee's ordinary shift on a Sunday and the payment that the employee is entitled to in terms of sub-clause (1) is less than the employee's ordinary daily wage, the employer must pay the employee the employee's ordinary daily wage.
- (3) Despite sub-clause (1) and (2), an agreement may permit an employer to grant an employee who works on a Sunday paid time off equivalent to the difference in value between the pay received by the employee for working on the Sunday and the pay that the employee is entitled to in terms of sub-clause (1) and (2).
- (4) Any time worked on a Sunday by an employee who does not ordinarily work on a Sunday is not taken into account in calculating an employee's ordinary hours of work in terms of clause 8, but is taken into account in calculating the overtime worked by the employee in terms of clause 8 (6),
- (5) If a shift worked by an employee falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.
- (6) An employer must grant paid time off in terms of subclause (3) within one month of the employee becoming entitled to it.
- (7) An agreement in writing may increase the period contemplated by sub-clause (6) to 12 months.

13. PUBLIC HOLIDAYS

- (1) An employer may not require an employee to work on a public holiday except in accordance with an agreement.
- (2) If a public holiday falls on a day on which an employee would ordinarily work, an employer must pay:
 - (a) an employee who does not work on the public holiday, at least the wage that the employee would ordinarily have received for work on that day;
 - (b) an employee who does work on the public holiday -
 - (i) at least double the amount referred to in paragraph (a); or
 - (ii) if it is greater, the amount referred to in paragraph (a) plus the amount

earned by the employee for the time worked on that day.

- (3) If an employee works on a public holiday on which the employee would not ordinarily work, the employer must pay that employee an amount equal to -
 - (a) the employee's ordinary daily wage; plus
 - (b) the amount earned by the employee for the work performed that day, whether calculated by reference to time worked or any other method.
- (4) An employer must pay an employee for a public holiday on the employee's usual pay day.
- (5) If a shift worked by an employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

14. ANNUAL LEAVE

- (1) In this clause "annual leave cycle" means the period of 12 months employment with the same employer following -
 - (a) the employee's commencement of work; or
 - (b) the completion of that employee's prior leave cycle.
- (2) Subject to sub-clause (4), an employer shall grant to an employee, and the employee shall take, in respect of an annual leave cycle, leave as follows -
 - (a) a watchperson whose ordinary hours of work -
 - (i) exceeds 48 in a week and who normally works on -
 - (aa) not more than five days in a week, 20 consecutive work-days;
 - (bb) more than five days in a week, 24 consecutive work-days;
 - (ii) do not exceed 48 in a week and who normally works on -
 - (aa) not more than five days in a week, 15 consecutive work-days;
 - (bb) more than five days in a week, 18 consecutive work-days;
 - (b) any other class of employee who normally works on -
 - (i) not more than five days in a week, 15 consecutive workdays;
 - (ii) more than five days in a week, 18 consecutive work-days;
 - (c) an employee who works on an hourly or a daily basis, one hour for every 17 hours worked; Provided that an employee who normally works on -
 - (i) not more than five days in a week, one day for every 153 hours or 17 days worked;
 - (ii) more than five days in a week, one day for every 136 hours or 17 days worked.

Provided that an employee who before this part of the Agreement became binding had been entitled to a longer period of annual leave than that prescribed in this sub-clause, shall retain the right to such leave while employed by the same employer;

- (3) The employer shall pay an employee in respect of the leave mentioned in sub-clause (1); in the case of an employee referred to in -
- (a) sub-clause (2) (a) (i), an amount of not less than four times the employee's weekly wage;
 - (b) sub-clause (2) (a) (ii) or (2) (b), an amount of not less than three times the employee's weekly wage, no such employee shall be paid less than three weeks' wages as annual leave pay;
 - (c) sub-clause (2)(c), an amount proportional to the weekly wage which the employee was receiving immediately prior to the date on which the leave commenced.
- (4) The leave mentioned in sub-clause (2) shall be granted and be taken, as the case may be, at a time to be fixed by the employer: Provided that -
- (a) if such leave has not been granted and taken earlier, it shall be granted and be taken so as to commence within six months after the completion of the 12 months of employment to which it relates;
 - (b) the period of leave shall not be concurrent with any period:
 - (i) of sick leave in terms of clause 15(2) or with absence from work owing to incapacity in the circumstances set out in clause 15 (8)(b) or (c); amounting in the aggregate in any period of 12 months to not more than 15 weeks;
 - (ii) during which the employee is under notice of termination of employment in terms clause 22, or
 - (c) an employer may set off against such period of leave any days of occasional leave granted up to a maximum of 7 days per annum on full pay to his employee at such employee's written request during the period of employment to which the annual leave relates;
 - (d) when an employer requires an employee to take leave before the expiration of the 12 months of employment to which such leave relates, the employer shall grant such employee the full period of leave accruable for 12 months of employment and, with due regard to the accrual of any increments in terms of clause 4, shall pay such employee in respect of such leave an amount of not less than that which the employee would have been entitled to at the date on which the leave would normally have accrued.
 - (e) If the employment of an employee referred to in paragraph (d) terminates before the expiration of 12 months in respect of which leave was granted in terms of that paragraph, the employer may set off the difference between the amount paid to the employee and the amount to which the employee would have been entitled in terms of sub-clause (7) had leave not been granted to him or her against the remuneration due to such an employee at the termination of the contract.
- (5) The remuneration in respect of the leave mentioned in sub-clause (2), shall be paid not later than the last work-day before the date of commencement of the leave or, at the

written request of the employee, not later than the first pay-day after the expiration of the leave.

- (6) An employee whose employment terminates during an incomplete leave cycle and who has been in employment for longer than 4 months shall, upon such termination and in addition to any other remuneration which may be due to him or her, be paid one day's remuneration in respect of every 17 days on which he or she worked or was entitled to be paid;

Provided that an employer may make a proportionate deduction in respect of any period of leave granted to an employee in terms of proviso (c) to sub-clause (4).

- (7) An employee who has become entitled to the period of leave mentioned in sub-clause (2), read with sub-clauses (4) (c) and whose employment terminates before such leave has been granted and been taken, shall and with due regard to sub-clause (9), upon such termination be paid the amount he or she would have received in respect of the leave had the leave been granted to and taken by him or her as at the date of the termination.

- (8) For the purposes of this clause:

- (a) the weekly wage at any date of an employee who is engaged in piecework or commission work shall be his or her average weekly remuneration for the preceding 13 weeks or, if a lesser period has been worked, for the number of completed weeks so worked;

- (b) "employment" and "period of employment" shall be deemed to include:

- (i) any period in respect of which an employer pays an employee in lieu of notice in terms of clause 22;

- (ii) any period amounting in the aggregate in any period of 12 months, to not more than 15 weeks during which an employee is absent

(aa) on leave in terms of this clause;

(bb) on sick leave in terms of clause 15 (2) or owing to incapacity in the circumstances set out in clause 15 (8)(b) or (c);

(cc) at the instance of his or her employer;

(dd) with the consent or condonation of his or her employer;

(ee) for any other reason that is not in breach of the contract of employment.

- (iii) previous employment with the same employer if the break in employment is less than one year.

- (c) employment shall be deemed to commence:

- (i) in the case of an employee who, before this part of the Agreement become binding, had become entitled to a period of annual leave in terms of any law, on the date on which he or she last became entitled to leave under that law;

- (ii) in the case of an employee who was in employment before this part of the Agreement became binding and to whom any law providing for annual leave applied but who had not yet 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 the employer's service or the date on which this part of the Agreement became binding, whichever is the later;
- (9) (a) Despite anything to the contrary contained in this clause, an employer may for the purposes of annual leave, at any time, but not more than once in any period of 12 months, close his or her establishment for 14 consecutive days or suspend an activity for 14 consecutive days and in that case he or she shall remunerate his or her employee in terms of sub-clause (2) or in terms of paragraph (c) hereof, as the case may be.
- (b) Whenever a paid holiday falls on a day which otherwise would be a work day for an employee and such paid holiday falls within the closed or suspension period referred to in paragraph, (a), another work-day shall be added to the said closed or suspension period as a further period of leave and the employee shall be paid an amount of not less than his or her daily wage in respect of each such day added.
- (c) An employee who, at the date on which an establishment or activity in which he or she is employed is closed or suspended, is not entitled to the full period of annual leave mentioned in sub-clause (2) shall, in respect of any leave due to him, be paid by his or her employer on the basis set out in sub-clause (7), and for the purposes of annual leave thereafter his or her employment shall be deemed to commence on the date of such closing of the establishment or suspension of the activity.
- (10) An employer may not pay an employee instead of granting paid leave in terms of this clause, except upon termination of employment and in accordance with sub-clauses (6) and (7).

15. SICK LEAVE

- (1) For purposes of this clause "sick leave cycle" means the period of 36 months employment with the same employer immediately following -
- (a) an employee's commencement of employment; or
 - (b) the completion of that employee's prior sick leave cycle.
- (2) An employee is entitled to an amount of paid sick leave, during every sick leave cycle, equal to the number of days the employee would normally work during a period of six weeks.
- (3) Despite sub-clause (2) during the first six months of employment, an employee is entitled to one day's sick leave for every 26 days worked.
- (4) An employer may, during the employee's first leave cycle, reduce the employee's entitlement to sick leave in terms of sub-clause (2) by the number of days' sick leave taken in terms of sub-clause (3).
- (5) If during the a sick leave cycle an employee is absent due to incapacity for longer than the number of days sick leave to which he or she is entitled in terms of sub-clause (2) the employer shall not be required to pay the employee for the excess sick leave taken.
- (6) Where an employer in terms of any law pays fees for hospital or medical treatment in respect of an employee, the fees so paid may be set off against the payment of sick leave.

- (7) Payment for any period of absence on sick leave to an employee who is employed on piecework or commission work shall be at the rate of not less than the employee's average remuneration for the last 13 weeks before the start of the sick leave or if a shorter period has been worked, for the number of completed weeks so worked.

- (8) Limitation -

An employer is not required to pay sick leave to an employee in terms of this clause:

- (a) If the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and the employee fails to produce a medical certificate stating the nature and duration of his or her incapacity, after having been requested to do so by the employer.

The medical certificate referred to in this sub-clause must be issued by a medical practitioner or any other person who is certified to diagnose and treat patients and is registered with a professional council established by an Act of Parliament.

- (b) If the employer, at the written request of an employee, makes a contribution that is at least equal to that made by the employee, to any fund or organisation nominated by the employee which in the event of the employee's incapacity in the circumstances set out in this clause would ensure the payment to the employee of an amount not less than the equivalent of his or her wage for any period of such leave in terms of sub-clause (2).
- (c) for any period of incapacity of an employee in respect of which the employer is required by any law to pay to the employee not less than his or her full wage.

Application to occupational accident or diseases -

- (9) This clause shall not apply to inability to work caused by an accident or occupational disease as defined in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993), except in respect of any period during which no compensation is payable in terms of that Act.

16. MATERNITY LEAVE

- (1) An employee is entitled to at least four consecutive months' 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 midwife 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
 - (b) return to work after maternity leave.
- (6) Notification in terms of sub-clause (5) must be given -
- (a) at least four weeks before the employee intends to commence maternity leave;
 - (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (7) Protection of employees before and after birth of a child -
- (a) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.
 - (b) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if:
 - (i) the employee is required to perform night work, as defined in clause 8 or her work poses a danger to her health or safety or that of her child; and
 - (ii) it is practicable for the employer to do so.

17. FAMILY RESPONSIBILITY LEAVE

- (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 sub-clause (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 payday.
- (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 section, an employer may require

reasonable proof of an event contemplated in sub-clause (2) 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.

18. PIECE-WORK

- (1) An employer may when engaging an employee or after at least one week's notice if the employee is already in his or her employ, introduce any piece-work system and, except as provided for in clause 7(4), such employer shall pay the employee who is employed on such piece-work system remuneration at not less than the wage mentioned in clause 4(1) for an employee of his or her category and experience, plus the rates applicable under such system.
- (2) An employer shall keep posted up in a conspicuous place in his or her establishment a schedule reflecting the rates referred to in subclause (1) or he or she may in lieu thereof supply every employee engaged on piece-work with a letter signed by himself/herself, or on his or her behalf, setting out the said rates.
- (3) An employer shall not require or permit an employee to undertake any work for him or her solely on piece-work basis and any amount payable to an employee in terms of sub-clause (1) shall be aside from and in addition to his or her wage, which shall not be less than the wage mentioned in clause 4(1) for an employee of his or her category and experience.
- (4) An employer who intends to cancel or amend any piecework system in operation, or the rates applicable thereunder shall give an employee not less than one month's notice of such intention: Provided that an employer and an employee may agree on a longer period of notice, in which case the employer shall give notice for a period not shorter than that agreed upon.

19. COMMISSION WORK

- (1) An employee who by agreement with an employer undertakes commission work on a regular basis shall be supplied by the employer, before such work is commenced, with a true copy of the agreement or a statement setting out the terms of the agreement, which shall include -
- (a) the wage payable to the employee, which shall not be less than the wage mentioned in clause 4(1) for an employee of his or her category and experience, the rate of the commission and the conditions of entitlement thereto;
 - (b) the day of the week or month on which commission earned is due and payable;
 - (c) the type, description, number, quantity or value of sales or orders (individual, weekly, monthly or otherwise) which the employer is from time to time prepared to accept;
 - (d) the day of payment of commission earned by the employee before termination of the contract of employment: Provided that such day of payment shall be no later than the last work-day of the month succeeding the month during which employment was terminated; and
 - (e) where applicable, the area in which the employee is required or permitted to work.
- (2) Except as provided for in clause 7(4), an employer shall pay an employee at not less

than the wage and rate of commission agreed upon between them.

- (3) The employee's wage and commission shall be paid on the day stipulated in the agreement referred to in sub-clause (1), and the provisions of clause 5(1) shall not apply in respect of such payment;
- (4) An employer shall not require or permit an employee to undertake any work for him or her on the basis of commission only and any amount payable to an employee as commission under an agreement entered into in terms of sub-clause (1) shall be aside from and in addition to the wage stipulated therein.
- (5) An employer or an employee who intends to cancel or to negotiate for an alteration of an agreement in regard to commission work shall give written notice of such intention, and the period of such notice shall not be less than nor run concurrently with that required to terminate the contract of employment of such employee in terms of clause 21.

20. PROHIBITION OF EMPLOYMENT

- (1) An employer shall not -
 - (a) employ any person under the age of 15 years; or
 - (b) a child who is under the minimum school leaving age in terms of any law, if he or she is 15 years or older.
- (2) An employer shall not employ a child in employment -
 - (a) that is inappropriate for a person of that age;
 - (b) that places at risk the child's wellbeing, education, physical or mental health or spiritual, moral or social development.
- (3) All forced labour is prohibited.

21. TERMINATION OF CONTRACT OF EMPLOYMENT

- (1) Despite clause 4(5), an employer or an employee who desires to terminate the contract of employment, shall give -
 - (a) during the first four weeks of employment, not less than one week's notice;
 - (b) after the first four weeks of employment, not less than two week's notice of termination of contract;
- (2) The notice of termination of a contract of employment must be given in writing except when it is given by an employee who is not able to write.
- (3) Where a notice of termination is given to an employee who is unable to read and understand it, the employer must arrange that the notice is explained to the employee in a language that the employee reasonably understands.
- (4) An employer or an employee may terminate the contract of employment without notice by paying the employee or paying the employer, as the case may be, in lieu of such notice not less than in the case of -
 - (a) one week's notice, the weekly wage the employee is receiving at the time of such termination;

- (b) two weeks' notice, the wages the employee is entitled to in the two weeks.

Provided that this shall not affect -

- (i) the right of an employer or an employee to terminate the contract without notice for any cause recognised by law as sufficient;
- (ii) the right of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of the Labour Relations Act, 1995 or any other law.

- (5) The notice referred to in sub-clause (1) shall be given on a work-day:

Provided that the period of notice shall not run concurrently with nor shall notice be given during an employee's absence -

- (a) on leave in terms of clause 14;
- (b) on sick leave in terms of clause 15(2);
- (c) owing to incapacity in the circumstances set out in clause 15(8)(b) or (c), amounting in the aggregate to not more than 15 weeks in a period of 12 months;
- (d) on maternity leave in terms of clause 16.

22. SEVERANCE PAY

- (1) For the purposes of this section, operational requirements' means requirements based on the economic, technological, structural or similar needs of any employer.
- (2) 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, calculated in accordance with clause 4.
- (3) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, is not entitled to severance pay in terms of sub-clause (2).
- (4) The payment of severance pay in compliance with this section does not affect an employee's right to any other amount payable according to law.
- (5) If there is a dispute only about the entitlement to severance pay in terms of this clause, the employee may refer the dispute in writing to the Council.

23. CERTIFICATE OF SERVICE

- (1) On termination of employment an employee is entitled to a certificate of service stating-
- (a) the employee's full name;
- (b) the name and address of the employer;
- (c) a description of any council or sectoral employment standard by which the employer's business is covered;
- (d) the date of commencement and date of termination of employment;
- (e) the title of the job or a brief description of the work for which the employee was

- employed at date of termination;
- (f) the remuneration at date of termination; and
 - (g) if the employee so requests, the reason for termination of employment.

24. UNIFORMS, OVERALLS AND PROTECTIVE CLOTHING

- (1) An employer shall supply, free of charge, any uniform, overall, gumboots, cap or other protective clothing which he or she is required by any law to provide to an employee or which the employee is required by any law to wear.
- (2) An employer to whom sub-clause (1) does not apply but nevertheless, explicitly or implicitly, requires an employee to wear any such protective clothing shall supply it free of charge.
- (3) Any such protective clothing which has been provided to an employee free of charge shall remain the property of the employer.

25. ATTENDANCE REGISTER

- (1) An employer shall provide in his or her establishment an attendance register substantially in the form and manner as specified by the Council from time to time in which he or she shall record in ink or indelible pencil the name and class of each of his or her employees, and if such employee is unable to write his or her employer shall on his or her behalf for each day worked and for that day make the necessary entries in respect of items (i) to (iv) inclusive of subclause (3) (a), and sign such entries in the presence of a person nominated by the employee.
- (2) An employer may, instead of an attendance register provide a semi automatic time recorder together with the necessary cards, which shall be as nearly as practicable in the form and manner as specified by the Council from time to time and supply to each employee such a card indicating the name or number of the employee and the date of termination of the week in respect of which it is to be used.
- (3) Unless prevented from doing so by unavoidable circumstances, an employee shall in respect of each day worked by him or her and on that day -
 - (a) record in ink or indelible pencil in the attendance register referred to in sub-clause (1):
 - (i) the day of the week;
 - (ii) the time he or she commenced work;
 - (iii) the time of commencement and termination of all meal or other intervals which are not reckonable as ordinary hours of work;
 - (iv) the time of finishing work the day;
 - (v) the time of commencement and termination of overtime worked for the day;
 - (vi) the total number of hours worked for the day; and
 - (vii) his or her signature.
 - (b) in an establishment where a semi-automatic time recorder is provided, make an

I-37

entry by means of such recorder on a card supplied in terms of sub-clause (2) to show the following:

- (i) the time he or she commenced work;
 - (ii) the time of commencement and termination of all meal or other intervals which are not reckonable as ordinary hours of work; and
 - (iii) the time of finishing work for the day.
- (4) An employer shall retain the attendance register referred to in sub-clause (2), as the case may be, for a period of not less than three years after the date of the last entry therein or thereon.

26. WRITTEN PARTICULARS OF EMPLOYMENT

- (1) An employer must supply an employee, when the employee commences employment, with the following particulars in writing -
- (a) the full name and address of the employer;
 - (b) the name and occupation of the employee, or a brief description of the work for which the employee is employed;
 - (c) the place of work, and, where the employee is required or permitted to work at various places, an indication of this;
 - (d) the date of employment;
 - (e) the employee's ordinary hours of work and days of work;
 - (f) the employee's wage or the rate and method of calculating wages;
 - (g) the rate of pay for overtime work;
 - (h) any other cash payments that the employee is entitled to;
 - (i) any payment in kind that the employee is entitled to and the value of the payment in kind;
 - (j) how frequently remuneration will be paid;
 - (k) any deductions to be made from the employee's remuneration;
 - (l) the leave to which the employee is entitled;
 - (m) the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;
 - (n) any period of employment with a previous employer that counts towards the employee's period of employment;
 - (o) a list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.
- (2) When any matter listed in sub-clause (1) changes -
- (a) the written particulars must be revised to reflect the change; and

- (b) the employee must be supplied with a copy of the document reflecting the change.
- (3) If an employee is not able to understand the written particulars, the employer must ensure that they are explained to the employee in a language and in a manner that the employee understands.
- (4) The employer must keep written particulars in terms of this clause for a period of 12 months after the termination of employment.

27. LOG BOOK

- (1) An employer shall provide his or her driver with a log-book as nearly as practicable in the form and manner as specified by the Council from time to time.
- (2) Every driver shall, in the log-book referred to in sub-clause (1), keep a daily log in duplicate in respect of each day's work and shall within 24 hours of the completion of the work to which it relates deliver a copy thereof to his employer and the employer shall retain such copy for a period of at least three years subsequent to such delivery.

28. KEEPING OF THIS PART OF THE AGREEMENT

- (1) Every employer on whom this part of the Agreement is binding must -
 - (a) keep a copy of the Agreement available in the workplace at all times;
 - (b) make the copy available for inspection by an employee; and
 - (c) give a copy of the Agreement -
 - (i) to an employee who has paid the prescribed fee; and
 - (ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

29. REGISTRATION OF EMPLOYERS

- (1) Every employer who has not already done so in pursuance of a previous agreement at the date of coming into operation of this part of the Agreement and every employer who enters the Industry after that date shall within seven days of such date or on the date on which such employer commenced operations, as the case may be, either electronically as provided on the Council's website, or forward to the General Secretary of the Council, P.O. Box 1142, Woodstock, 7915 or to the Regional Secretary of the Regional Chamber or Sub-Chamber in whose area of responsibility the employer's business falls, by registered post, the following particulars which shall be in writing and signed by the employer or a person duly authorised to sign on behalf of the employer:
 - (a) The trading name, business address and registered address of the establishment;
 - (b) the full names and residential addresses of all partners and/or directors and/or members;
 - (c) the full name and residential address of the responsible manager;

- (d) the section or sections of the Industry in which the establishment is engaged;
 - (e) date of commencing operations.
 - (f) the company's or corporation's registration number;
 - (g) the company's or corporation's or partnership's registration number with the South African Revenue Services (SARS);
 - (h) the company's or corporation's or partnership's registration number with the Unemployment Insurance Fund (UIF);
 - (i) a copy of the registration or incorporation certificate of the company or corporation, as the case may be.
- (2) Written notification shall be sent by registered post to the Council by every employer of any alteration in respect of any details supplied in terms of sub-clauses (1) (a) to (e) of this clause, and such notification shall be given within 7 days of such alteration.

30. REGISTRATION OF EMPLOYEES

- (1) No employer shall require his employees to work and no employee shall work in premises other than an establishment provided, equipped, maintained and controlled by such employer, and which shall be registered with the Council in terms of Clause 29 of this part of the Agreement.
- (2) An employer shall not allow any work in the Clothing Industry to be performed in a dwelling-house.
- (3) No employee engaged in the employ of one establishment may perform work in another establishment without first having been discharged by the first establishment and re-registered by the second establishment.
- (4) An employer shall, before engaging an applicant for work, require the applicant to produce a service card issued by the Council. If the applicant is a new entrant into the Clothing Industry or cannot produce a Council service card, the provisions of sub-clause (5) (c) below shall apply.
- (5) Upon engagement, the employer shall-
 - (a) enter in the relevant columns of the service card: the name of his factory, the date of engagement, occupation, wage on engagement and total previous experience and shall retain the card in safekeeping so that it can be dealt with in terms of sub-clause (7) upon termination of service of the employee; and
 - (b) complete a "Registration of Employee" form either electronically as contained on the Council's website, or in triplicate, forward the original to the Regional Chamber in whose area of responsibility the employer's business falls, not later than Friday of that week, hand the duplicate copy to the employee and retain the triplicate copy for his records; and
 - (c) in the case of an employee who is a new entrant into the Industry or an employee who cannot produce a Council service card -
 - (i) complete the "Registration of Employee" form either electronically as contained on the Council's website, or in triplicate and send the original and duplicate copy together with a copy of the employee's identity document to the Regional Chamber in whose area of responsibility the employer's business falls, where he will be allocated a Council registration

number, issued with a Council service card and be registered in the employ of the employer. The triplicate copy shall be retained by the employer for his records;

- (ii) the employer shall acquire the service card of the employee before he commences work and the employer shall retain same until the employee's services are terminated and the service card is dealt with in terms of sub-clause (4).
- (6) An employer shall forward to the Regional Chamber in whose area of responsibility the employer's business falls, for amendment the service card of any employee who is transferred from one category to another, the latter of which requires a higher rate of remuneration, within seven (7) days of such transfer.
 - (7) The service card shall be retained by the employer until the employee leaves his employer, whereupon the employer shall enter on the card the date of termination of employment, the occupation and the rate of pay on termination, and return the card to the employee after signing it.
 - (8) On the Friday of the week during which an employee's services are terminated, the employer shall forward to the Regional Chamber in whose area of responsibility the employer's business falls, a report of termination of service stating the reason for the employee's termination of service.
 - (9) The Council shall have the power to withdraw any record of service card which is subsequently found to contain incorrect information. The Council shall upon being furnished with the correct information, issue a fresh record card *in lieu* thereof.

31. EXEMPTIONS

- (1) Any business entity, whether a party or non-party to the Council, which is registered with, and falls within, the Council's registered scope for the purposes of this part of the Agreement, may apply to the Council for exemption from any or all of the provisions of this part of the Agreement.
- (2) All applications for exemption must be made in writing on a prescribed form provided by the Council.
- (3) All applications for exemption must be motivated in accordance with the exemption criteria set out in sub-clause (7) below; must be supported by 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 and how many of such employees are members of a registered trade union;
 - (c) The clauses and sub-clauses of the agreement from which the exemption is requested;
 - (d) Satisfactory proof that the applicant has consulted, or will consult, its employees at plant level in respect of the exemption sought, such consultations to include a registered party trade union, where such union has members employed at the workplace, including the response resulting from such consultations.
 - (e) The demonstrable commercial need of the applicant for the exemption sought.
- (4) (a) The General Secretary of the Council or the Regional Secretary of the Regional Chamber concerned, or in their absence any other person

designated by the Executive Committee, shall forthwith refer the full exemption application to the Exemptions Committee, which shall have delegated power to deal with such application on behalf of the Council.

- (b) The Exemptions Committee shall consider and determine the application in accordance with the criteria set out in sub-clause (7) below, within 45 days from the date of lodgement of the application with the General Secretary, failing which the application will be deemed to have been refused.
 - (c) The Exemptions Committee may call for any further information or submissions as it deems appropriate from the applicant, prior to making a decision. The time period stipulated in sub-clause (b) above, may be extended by agreement between the applicant and the committee by the period the applicant takes to furnish the additional information or submissions.
 - (d) The Exemptions Committee may, after considering the application in terms of the provisions and the criteria contained in this clause, 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. If the Applicant is not prepared to accept a partial granting of the application or any conditions imposed by the Exemptions Committee, the application will be deemed to have been refused.
 - (e) Subject to the time period for considering the application as provided in sub-clause (b) above, should the Exemptions Committee be unable to agree, the application shall be deemed to have been refused and the reasoning of the members of the committee who wish to reject the application, shall constitute the reasons of the Exemptions Committee for the purposes of sub-clause (j) below.
 - (f) The Exemptions Committee shall notify the applicant of its decision within 7 days of such decision having been reached.
 - (g) If the application has been granted or partially granted, the Exemptions Committee 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 exemption(s) will be valid;
 - (iii) The clauses or sub-clauses of the agreement in respect of which exemption was granted or partially granted;
 - (iv) The full name of the exempt employer or employee(s).
 - (h) Upon receipt of a written request, the Exemptions Committee shall provide brief written reasons for its decision to grant the exemption to any party which has an interest in the matter;
 - (i) If the application for exemption is rejected or partially approved, the Exemptions Committee shall provide concise written reasons for such rejection or partial approval to the applicant within seven days of its decision: Provided that such reasons given by the Exemptions Committee shall not bind the Independent Exemptions Body (Exemptions Board) in considering any appeal provided for in sub-clause (5) below, since the latter may make a decision on appeal in accordance with such reasons as he or she deems appropriate, subject to the provisions of this clause insofar as it applies to the Independent Exemptions Body.
- (5) (a) Any decision of the Exemptions Committee to reject, partially approve or withdraw the application, may be referred on appeal to the Independent

Exemptions Body (Exemptions Board) hereby established in terms of the Act and the Constitution of the Council.

Such application shall be lodged within not more than 30 days of the applicant's being notified of the decision of the Exemptions Committee. The Exemptions Board may condone a late appeal on good cause shown.

- (b) The Exemptions Board shall have the power to levy a fee payable by the appellant and to determine the quantum thereof: Provided that such a fee shall be consistent with-
 - (i) the cost incurred for the hearing of the appeal; and/or
 - (ii) the cost incurred by the Council for the hearing of the appeal where the Exemptions Board is satisfied that such an appeal is without merit.
 - (c) The Exemptions Board shall also have the power to raise a cost order on the applicant in respect of costs incurred by the parties to the appeal where it is satisfied that it will be proper to do on the basis that the appeal is so completely without merit that it would be justified in doing so.
- (6) (a) The Exemptions Board shall consist of a single independent umpire appointed by the parties from a panel selected for this purpose;
- (b) The Exemptions Board shall determine the procedure to be adopted in determining the appeal;
- (c) The provisions of sub-clause (4) above shall, read with the changes required by the context, apply equally to the appeal process;
- (d) The Exemption Board's decision shall be final and binding.
- (7) The applicant shall satisfy the Executive Committee of the Council or the Exemptions Committee, and where applicable, the Exemptions Board that-
- (a) there is a demonstrable commercial need for the exemption;
 - (b) competitors covered by the Council who are in compliance with the applicable Council Agreements will not be materially prejudiced by the exemption;
 - (c) no infringement of the Basic Conditions of Employment Act or the Labour Relations Act will result if the exemption is granted nor will the application, if granted, result in a conflict with the primary objectives of the Act;
 - (d) the exemption will not undermine collective bargaining and labour peace in the Industry;
 - (e) there has been compliance with subclause (3) above;
 - (f) the majority of affected employees at the plant are in favour of the proposed exemption if it affects wages, benefit fund contributions, or levies and, in such instance, either the employer, or the trade union may request that a ballot be conducted.
- (8) In addition, the Exemptions Committee and the Exemptions Board, when determining applications for exemptions, shall take into account-
- (a) the merits of the written and oral (if any) motivation provided by the applicant, the documentation supporting the application and, in particular, whether the applicant has put up a compelling case for the exemption;

I-43

- (b) whether the applicant firm will constitute a viable concern after the expiry of the exemption;
 - (c) if the exemption sought is from any employee benefit fund, the sufficiency of the alternative benefit proposed by the applicant, including such factors as the cost to the employee, transferability, administration, management, costs, growth and stability;
 - (d) the terms of the exemption sought, including the period thereof;
 - (e) any existing or projected special financial, economic or other circumstances put forward by the applicant as reasons warranting the granting of an exemption, including what economic hardship the applicant will suffer if the applicant is refused: Provided that the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may require the disclosure of such relevant, verifiable information as it deems fit in this regard;
 - (f) the history of the business entity and/or its shareholders, directors and owners within the Industry, including the period of its operation and in particular whether or not the entity is a new emerging enterprise or a small or medium enterprise (SME); and its history of compliance with Council agreements;
 - (g) any representations made by the employees and/or their representatives, including a registered trade union, the Council or Executive Committee or Exemptions Committee and/or the parties to the Council and/or the relevant Regional Chamber of the Council;
 - (h) any possible alternatives which may be acceptable to the applicant and/or any other interested party in the circumstances;
 - (i) the cost, efficiency and administration of any conditions which the Executive Committee of the Council or the Exemptions Committee or the Exemptions Board may feel it necessary to impose;
 - (j) what cost-saving measures may have been implemented by the applicant other than those in respect of its cost of labour;
 - (k) what hardship may eventuate to employees in the event of the exemption being granted;
 - (l) any relevant time limits contained in the Council's constitution and the Act, and, in particular, that any exemption or partial granting of an exemption shall be for a fixed, stipulated period;
 - (m) any other relevant factors, including any decisions of the Council relevant to exemption applications.
- (9) (a) An applicant is entitled to apply on the prescribed form to the General Secretary of the Council for the extension of any exemption granted by either the Exemptions Committee or the Exemptions Board. An application for extension shall contain such additional information as may be necessary and required to substantiate the request with reference to the criteria set out in sub-clause (7) above;
- (b) The procedure and requirements for considering and determining an application for extension shall be in accordance with the provisions of sub-clause (4) above read with the changes required by the context.

- (10) Employers employing five or fewer employees shall, upon application to the Council through the General Secretary, be exempted from the provisions of this part of the Agreement.

32. COUNCIL FUNDS

- (1) The employer and the employee NBC Levy contribution shall be converted to a percentage-based contribution.
- (2) The following table shall be used in determining the new NBC levy contributions:

Employees	Employers
Payable by THE EMPLOYEE by means of a deduction from an employee's wages:	Payable by THE EMPLOYER:
Calculated at 0,37% of a qualified machinist's rate of pay in "other areas" as defined in the attached wage schedule (This equates to R2,36 with effect from 1 st September 2013)	Calculated at 0,47% of a qualified machinist's rate of pay in "other areas" as defined in the attached wage schedule (This equates to R3,00 with effect from 1 st September 2013)

- (3) The total so deducted together with an equal amount which shall be contributed by the employer shall be forwarded together with a list showing Council registration numbers of employees detailing particulars of contributions, to the General Secretary of the Council, or Regional Secretary of the Regional Chamber of this Council in whose area of responsibility the employer's business falls to reach him no later than 14 days after the end of each calendar month.
- (4) Should any amount due in terms of this clause not be received by the Regional Chamber 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 Regional Chamber 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 Regional Chamber: Provided that the Regional Chamber shall be entitled in its absolute discretion to waive payment of such interest or part thereof in any individual instance.
- (5) In the event of the Council or Regional Chamber 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 pay forthwith all such costs of whatever nature as between attorney and client and all such collection commission, and the Council or Regional Chamber shall be entitled in its absolute discretion to allocate any payment by the employer first in satisfaction of such costs, collection commission and interest, and thereafter in reduction of the overdue capital amount.

33. AGENTS

- (1) The Council may request the Minister of Labour to appoint one or more specified persons as designated agents to assist in enforcing the terms of this part of the Agreement.
- (2) A designated agent may –
- (a) secure compliance with the Council's collective agreements by –
- (i) publicising the contents of the agreements;
 - (ii) conducting inspections;

- (iii) investigating complaints;
 - (iv) means of conciliation;
 - (v) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period; or
 - (vi) any other means the council may adopt.
 - (b) perform any other functions that are conferred or imposed on the agent by the Council.
- (3) A designated agent must report all disputes concerning compliance with any provision of this part of the Agreement to the General Secretary of the Council and to a designated official at the relevant Regional Chamber of the Council.
- (4) Within the registered scope of the Council, a designated agent of the bargaining council has all the following powers:
- (a) A Designated Agent may, without warrant or notice at any reasonable time, enter any workplace or any other place where an employer carries on business or keeps employment records, that is not a home, in order to monitor or enforce compliance with a collective agreement concluded in the Council.
 - (b) A Designated Agent may only enter a home or any place other than a place referred to in sub-clause (1) –
 - (i) with the consent of the owner or occupier; or
 - (ii) if authorised to do so by the Labour Court in terms of sub-clause (3).
 - (c) The Labour Court may issue an authorisation contemplated in sub-clause (2)(b) only on written application by a designated agent who states under oath or affirmation the reasons for the need to enter a place, in order to monitor or enforce compliance with a collective agreement concluded in the Council.
 - (d) If it is practicable to do so, the employer and a trade union representative must be notified that the designated agent is present at a workplace and of the reason for the designated agent's presence.
 - (e) In order to monitor or enforce compliance with a collective agreement a designated agent may -
 - (i) require a person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on a matter to which a collective agreement relates, and require that disclosure to be under oath or affirmation;
 - (ii) inspect and question a person about any record or document to which a collective agreement relates;
 - (iii) copy any record or document referred to in paragraph (b) or remove these to make copies or extracts;
 - (iv) require a person to produce or deliver to a place specified by the designated agent any record or document referred to in paragraph (b) for inspection;
 - (v) inspect, question a person about, and if necessary remove, an article, substance or machinery present at a place referred to in sub-clause (1) and (2);
 - (vi) question a person about any work performed; and
 - (vii) perform any other prescribed function necessary for monitoring or enforcing compliance with a collective agreement.
 - (f) A designated agent may be accompanied by an interpreter and any other person reasonably required to assist in conducting an inspection.
 - (g) A designated agent must -

- (i) produce on request a copy of the authorisation referred to in sub-clause (3);
 - (ii) provide a receipt for any record or document removed in terms of sub-clause (5)(e); and
 - (iii) return any removed record, document or item within a reasonable time.
- (h) Any person who is questioned by a designated agent in terms of sub-clause (5) must answer all questions lawfully put to that person truthfully and to the best of that person's ability.
- (i) An answer by any person to a question by a designated agent in terms of this item may not be used against that person in any criminal proceedings, except proceedings in respect of a charge of perjury or making a false statement.
- (j) Every employer and each employee must provide any facility and assistance at a workplace that is reasonably required by a designated agent to effectively perform the designated agent's functions.
- (k) The Council may apply to the Labour Court for an appropriate order against any person who —
- (i) refuses or fails to answer all questions lawfully put to that person truthfully and to the best of that person's ability;
 - (ii) refuses or fails to comply with any requirement of the designated agent in terms of this clause; or
 - (iii) hinders the designated agent in the performance of the agent's functions in terms of this clause.
- (l) For the purposes of this clause, a collective agreement is deemed to include any basic condition of employment which constitutes a term of a contract of employment in terms of Section 49(1) of the Basic Conditions of Employment Act.

34. DISPUTE PROCEDURE

- (1) Unless otherwise provided in the Council's Constitution or this collective agreement, any dispute within the registered scope of the Council must be resolved as set out below.
- (a) The General Secretary of the Council must decide, after consultation with the Secretary of any relevant Regional Chamber, whether any dispute referred to the Council must be dealt with by the Council or the Regional Chamber.
 - (b) The Council must, from time to time, adopt, by resolution, guidelines for the General Secretary of the Council to follow in the allocation of such disputes.
 - (c) When any dispute is allocated to a Regional Chamber in terms of this clause then such Regional Chamber will have the same rights, powers and obligations as the Council.

(2) **Accreditation**

- (a) With a view to performing its dispute resolution functions in terms of Section 51(3) of the Act only, the Council must by decision apply to the governing body of the CCMA for accreditation to perform these functions as appropriate.
- (b) In the event that the Council fails to secure such accreditation, the Council may enter into an agreement with the CCMA in terms of which the CCMA is to perform, on behalf of the Council, its dispute resolution functions in terms of Section 51(3) of the Act.

(3) Panel of Conciliators, Arbitrators and Senior Arbitrators

- (a) The Council must appoint:
- (i) a panel of conciliators, for the purpose of conciliating disputes;
 - (ii) a panel of arbitrators, for the purpose of determining disputes;
 - (iii) a panel of senior arbitrators, for the purpose of determining disputes where:
 - (aa) the nature of the questions of law raised by the dispute;
 - (bb) the complexity of the dispute;
 - (cc) conflicting arbitration awards, Labour Court precedents or Labour Appeal Court precedents; and/or
 - (dd) the public interestrequires the appointment of a senior arbitrator and a party to the dispute requests that the Council refer the dispute for determination by a senior arbitrator.
- (b) The Council must determine from time to time the number of persons to be appointed to the panels of conciliators and arbitrators.
- (c) All parties to the Council must attempt to reach agreement on the persons to be appointed to the conciliation and arbitration panels. In the event that the parties to the Council cannot agree on the appointment of some or all of the conciliators and 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 each panel, and the employer parties to the Council must do likewise;
 - (ii) the lists prepared by the parties must be exchanged, and the union parties must rank the nominees of the employer parties in order of their preference, and the employer parties must do likewise in respect of the nominees of the union parties;
 - (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' lists 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 General Secretary of the Council will draw the name of the remaining appointee.
- (d) The arbitrators and senior arbitrators are to be appointed to the relevant 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 arbitrators and senior arbitrators not be re-appointed, all parties to the Council must attempt to reach agreement on the persons to be appointed to the panel or

senior panel, failing which the remaining vacancies will be filled according to the method described in sub-clause 3(c) above.

- (e) Despite sub-clause 3(d) above, the Council may remove a member of the panel of conciliators or arbitrators from office:
 - (i) for serious misconduct; or
 - (ii) due to incapacity; or
 - (iii) if at least one half of the employer parties and at least one half of the union parties have voted in favour of the removal of that member from the panel.
- (f) If for any reason there is a vacancy on the panels, the Council may appoint a new member to the relevant panel according to the method described in sub-clause 3(c) above for the unexpired portion of the predecessor's term of office.
- (g) Subject to sub-clause 3(i), a person may be appointed to one or more of the panel of conciliators and the panel of arbitrators or senior arbitrators.
- (h) An employee of the Council shall be eligible for appointment to the panel of conciliators and the panel of arbitrators, provided that, should the Council have an interest in the dispute to be arbitrated, employees of the Council will not be eligible to arbitrate the dispute.
- (i) An employee of the Council shall not be eligible for appointment to the senior panel of arbitrators.
- (j) Unless the parties to the dispute have agreed on a member of the relevant panel to conciliate or arbitrate their dispute or on a procedure to allocate disputes to the panel, the General Secretary of the Council or other designated official must appoint a member of the relevant panel to conciliate or arbitrate the dispute on a rotational basis, with the next available conciliator, arbitrator or senior arbitrator being appointed, as the case may be, should any panel member(s) not be available in terms of such rotation.

(4) Disputes involving non-parties to the Council

Any dispute contemplated in Section 51(3) of the Act, where any party to the dispute is not a party or a member of a party to the Council must be resolved by the Council according to the following procedure:

(a) Referral and conciliation of disputes

- (i) any of the parties to the dispute may refer the dispute in writing to the Council, setting out the nature of the dispute and the outcome sought;
- (ii) the party who refers the dispute to the Council must satisfy the Council that a copy of the referral has been served on all other parties to the dispute;
- (iii) the General Secretary or other designated official must appoint a member of the panel of conciliators who must attempt to resolve the dispute through conciliation within thirty (30) days from the date of the Council receiving the written referral of the dispute, or any extended period as agreed to in writing by the parties to the dispute;
- (iv) the conciliator may, during conciliation proceedings:

- (aa) mediate the dispute;
 - (bb) conduct a fact-finding exercise; and
 - (cc) make a recommendation to the parties to the dispute, which may be in the form of a non-binding advisory arbitration award.
- (v) Representation of a party to the dispute in the conciliation proceedings must be in accordance with the provisions of the Act in relation to conciliation proceedings at the CCMA.
 - (vi) At the end of the thirty (30) day period, referred to in sub-clause 4(a)(iii) above or any further period agreed to in writing by the parties to the dispute, the General Secretary or other designated official of the Council must issue a certificate stating whether or not the dispute has been resolved.
 - (vii) Nothing in this part of the Agreement prevents an officer or an employee of the Council from investigating the dispute or attempting to conciliate the dispute before the appointment of a conciliator.

(b) Adjudication of disputes referred to the Council for arbitration.

- (i) If the dispute remains unresolved after conciliation, any party to the dispute may request that the dispute be resolved through arbitration if:
 - (aa) the Act requires that the dispute be arbitrated; or
 - (bb) all the parties to the dispute consent to arbitration under the auspices of the Council, irrespective of whether such dispute may be subject to the jurisdiction of the CCMA or Labour Court in terms of the Act.
- (ii) Upon receipt of such written request for arbitration from a party to the dispute, the General Secretary or other designated official of the Council must appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (iii) Such written request for arbitration must be made within the time period prescribed in the Act, provided that the arbitrator may permit the late request for arbitration on good cause.
- (iv) The General Secretary or other designated official of the Council must serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (v) 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 the arbitrator to be frivolous or vexatious.
- (vi) Any party who has a legal interest in the outcome of the arbitration and a party whose application in terms of sub-clause 4(b)(v) above has been granted by the arbitrator, shall have the right to:
 - (aa) give evidence;
 - (bb) call witnesses;

- (cc) question the witnesses of any other party;
 - (dd) address arguments to the arbitrator;
 - (ee) be represented in accordance with the provisions of Section 138 and Section 140 of the Act.
- (vii) The arbitration proceedings must be conducted in accordance with the provisions of the Code of Conduct for conciliators and arbitrators as agreed to by the Council, sections 138 and 142 and, if applicable, Sections 139, 140 and 141 of the Act, read with the changes required by the context.
- (viii) Representation at arbitration proceedings will be in accordance with the provisions of the Act in relation to arbitration proceedings at the CCMA.
- (ix) The arbitrator who has been appointed to resolve the dispute has the powers of a Commissioner in terms of Sections 138 and 142 of the Act.
- (x) Subject to the provisions of the Act, an award made by the arbitrator appointed to resolve the dispute is final and binding on the parties to the dispute. The arbitrator shall, however, have the power to vary, rescind or amend an award made by him/her on good cause shown or of his own accord; and without limiting the generality thereof, 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;
 - (bb) the award is ambiguous or contains an obvious error or omission;
 - (cc) the award was granted as a result of a mistake common to the parties to the proceedings.
- (xi) The Council must serve the award, together with any written reasons, on all parties to the dispute.
- (xii) Upon receipt of a written request from a party to the dispute, the General Secretary or other designated official of the Council must apply to the director to certify that the arbitration award is an award contemplated in Section 143 (1) of the Act.

(5) Disputes involving parties to the Council

- (a) For the purposes of this clause, a party to the Council includes the members of any registered trade union or registered employers' organisation that is a party to the Council.
- (b) If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the Council or in any Regional Chamber, the General Secretary or other designated official must appoint a member of the panel of conciliators, who must attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was minuted or referred to the Council, or within any extended period as agreed to in writing by the parties to the dispute. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act.
- (c) Any other dispute between parties to the Council, which the Act requires to be arbitrated or which disputes would otherwise be adjudicated by the Labour Court

but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, must be resolved by the Council in accordance with the procedure set out in sub-clause 4 above, subject to the proviso in sub-clause 5(d) below.

- (d) Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of this part of the Agreement and/or any collective agreement between the parties to the dispute, the General Secretary or other designated official of the Council must appoint a member of the panel of senior arbitrators to arbitrate the dispute.

(6) Compliance procedure and enforcement of collective agreements by Council

- (a) The Council must request the Minister to appoint certain identified persons as the designated agents of the Council to promote, monitor and enforce compliance with this collective agreement concluded in the Council.
- (b) Such designated agents shall perform the functions and have the powers set out in the Act, including Sections 33 and 33A and Schedule 10 of the Act. It is specifically recorded that such a designated agent shall have the power to issue a compliance order.
- (c) The Council shall take all reasonable steps necessary to ensure compliance with this part of the Agreement and with the collective agreements concluded in the Council. If, whether through its own investigations or through any other source, it appears that the provisions of such an agreement may have been breached, then the following procedures shall apply to enforce compliance:
- (i) the General Secretary of the Council shall appoint a designated agent to investigate the alleged breach and may delegate such powers of appointment to the Secretary of a Regional Chamber;
- (ii) if, upon completion of the investigation, the designated agent has reason to believe that an agreement has been breached, the agent may endeavour to secure compliance with the agreement, in terms of guidelines of, or decisions by the Council, where these exist, by:
- (aa) publicising the contents of the agreement;
- (bb) conducting inspections;
- (cc) investigating complaints;
- (dd) endeavouring to secure compliance with the agreement through conciliation; or
- (ee) issuing a compliance order requiring any person bound by the agreement to comply with the agreement within a specified period.
- (iii) The designated agent must report all disputes concerning compliance with any provision of a collective agreement to the General Secretary of the Council and a designated official of the Regional Chamber.
- (iv) Upon receipt of the report of an unresolved dispute, the General Secretary or other designated official of the Council or Regional Chamber may refer the unresolved dispute to arbitration.

- (v) The General Secretary or other designated official of the Council or Regional Chamber must appoint a member of the relevant panel of arbitrators to arbitrate the dispute.
- (vi) The General Secretary or other designated agent of the Council or Regional Chamber must serve notice of the date, time and venue of the arbitration on the parties to the dispute.
- (vii) If a party to such an arbitration is not a party to the Council and objects to the appointment of a member of the panel, the General Secretary or other designated official of the Council or Regional Chamber must request the CCMA to appoint an arbitrator, in which event the objecting party shall pay the arbitrator's fee to the Council, and the Council shall pay the fee set by the CCMA.
- (viii) The provisions of sub-clauses 4(b)(v) to 4(b)(xii) above apply to an arbitration in terms of this clause.
- (ix) In addition, an arbitrator conducting an arbitration in terms of this clause may make any appropriate award including:
 - (aa) ordering any person to pay any amount owing in terms of a collective agreement;
 - (bb) imposing a fine for a failure to comply with a collective agreement in accordance with Item 29 of Schedule 7 and Section 33A(13) of the Act;
 - (cc) charging a party to the arbitration an arbitration fee;
 - (dd) ordering a party to the arbitration to pay the costs of the arbitration;
 - (ee) confirming, varying or setting aside a compliance order issued by a designated agent;
 - (ff) any award contemplated in Section 138(9) of the Act;
 - (gg) any award in relation to the interest payable on any amount that a person is obliged to pay in terms of a collective agreement.
- (x) Subject to the provisions of the Act, an award in an arbitration conducted in terms of this sub-clause 6 is final and binding on the parties to the dispute.
- (xi) The General Secretary or other designated official of the Council may apply to the director to certify that the arbitration award is an award contemplated in Section 143(1) of the Act.
- (xii) The provisions of this procedure stand in addition to any other legal remedy through which the Council may enforce a collective agreement.

(7) Non-Compliance

- (a) Outsourcing to non-compliant companies shall not be permitted in the industry.
- (b) The parties shall enter into agreements with all Provincial and Local governments which shall have the effect that their sourcing from the

Industry shall include a requirement to only source from companies which hold a valid Certificate of Compliance from the bargaining council.

35. TRADE UNION ACCESS TO WORKPLACE

- (1) Any office-bearer or official of the trade union party to the Council is entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve members' interests.
- (2) The trade union party to the Council, is entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of the trade union party to the Council are entitled to vote at the employer's premises in any election or ballot contemplated in the trade union's constitution.
- (4) The rights conferred by this section are subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.
- (5) In order to promote orderly industrial relations, the union party to the Council shall be entitled to on-site balloting facilities in order to conduct any ballot in terms of the Act.
- (6) Access to email and internet facilities for shop stewards will be encouraged, provided that such access shall be during shop stewards' own time and dealt with in a manner that is not disruptive to production.

36. DEDUCTION/PAYMENT OF TRADE UNION SUBSCRIPTIONS OR LEVIES

- (1) Any employee who is a member of the trade union party to the Council may authorise the employer in writing to deduct subscriptions or levies payable to the trade union from the employee's wages.
- (2) An employer who receives an authorisation in terms of subclause (1) must begin making the authorised deduction as soon as possible and must remit the amount deducted to the Regional Chamber in whose area of responsibility the employer's business falls by not later than the 14th day of the month first following the date each deduction was made.
- (3) An employee may revoke an authorisation given in terms of subclause (1) by giving the employer and the trade union one month's written notice.
- (4) An employer who receives a notice in terms of subclause (3) must continue to make the authorised deduction until the notice period has expired and then must stop making the deduction.
- (5) With each monthly remittance the employer must give the relevant Regional Chamber of the Council –
 - (a) a list of the names of every member from whose wages the employer has made the deductions that are included in the remittance;
 - (b) details of the amounts deducted and remitted and the period to which the deductions relate; and
 - (c) a copy of every notice of revocation in terms of subclause (3).
- (6) HIV/AIDS Contribution -

- (a) Every employer to whom this part of the Agreement applies shall each week for each employee in his employ contribute an amount of 40 cents to the SACTWU HIV/AIDS Project.
 - (b) The amount shall be submitted to the Regional Secretary of the Regional Chamber of the Council in whose area of responsibility the employer's business fall, by not later than the 14th day of the month first following the month in respect of which the payment is due.
 - (c) The total amount so collected by the Council shall be transferred to SACTWU's Finance Department.
- (7) Trade Union Agency Shop
- (a) **Scope-** Agency fees will apply to employees who –
 - (i) are not members of the trade union party, but are eligible for membership thereof;
 - (ii) are not bound by the provisions of the closed shop clause; and
 - (iii) fall within the scope of this part of the Agreement.
 - (b) **Union membership:** Employees are not compelled to become members of the trade union party.
 - (c) **Agency fee deductions:** Every employer to whom this clause applies shall:
 - (i) deduct from the wages of an employee an amount equivalent to the union subscription; and
 - (ii) pay such monies to the Regional Secretary of the Regional Chamber of the Council in whose area of responsibility the employer's business fall, by not later than the 14th day of the month first following the month in respect of which the payment is due.
 - (iii) the deduction of the agency fee may be made from the wages of an employee without the employee's authorisation as provided for in section 25(4) of the Act.
 - (d) **Payment of agency fees:** The Regional Secretary shall pay the received trade union agency fee deductions to the trade union by not later than the end of the month in which the fees were received.
 - (e) **Utilisation of agency fees:** No agency fee deducted may be -
 - (i) paid to a political party as an affiliate fee;
 - (ii) contributed in cash or kind to a political party or a person standing for election to any political office; or
 - (iii) used for any expenditure that does not advance or protect the socio-economic interests of employees.

37. TRADE UNION'S REPRESENTATIVES ON THE COUNCIL

- (1) Every employer shall give to any of his employees who are representatives on the Council every reasonable facility to attend to their duties in connection with the work of

the Council: Provided that in establishments employing five or fewer employees the trade union shall give the employer five working days written notice of its request for time off in terms of this clause, for its representative to attend to such duties.

- (2) Duly elected shop stewards are each entitled to ten working days paid leave per calendar year pooled per establishment to be used at the discretion of the trade union for bona fide trade union activities, provided that the employer is given at least ten (10) working days prior notice thereof, (For the purpose of this clause a "working day" shall mean any day excluding a Saturday and Sunday, a public holiday in terms of this part of the Agreement and the period of annual shut-down)

38. DISPUTES IN REGARD TO ORGANISATIONAL RIGHTS

- (1) If any dispute arises out of the interpretation or the application of clauses 35, 36 or 37 above, then such dispute must be dealt with in accordance with the dispute resolution procedures contained in this part of the Agreement.
- (2) An arbitration award regulating any of the matters referred to in these clauses remains in force until the expiration of this part of the Agreement.

39. TERMS AND CONDITIONS MORE FAVOURABLE

All terms and conditions of employment applicable to employees at the various companies or concerns covered by the scope of this part of the Agreement will, where they are more favourable than those concluded in this part of the Agreement, remain in full force and effect, unless otherwise agreed or determined through lawfully permissible means.

40. FREQUENCY OF NEGOTIATIONS AND INDUSTRIAL ACTION

- (1) This Amending Agreement shall remain in force until 31 August 2013, save that the parties to the Council shall annually negotiate through collective bargaining amendments to this Amending Agreement, unless they agree to negotiate at different intervals, provided that no amendment(s) shall take effect before 1 September 2012.
- (2) Either party to the Council, and in the event of this part of the Agreement being extended to non-parties, non-party employers and their employees shall have the right to pursue industrial action within establishments bound by the provisions of this part of the Agreement, in compliance with the Act after utilising applicable procedures, in the event of agreement not being reached on any issues in negotiations at the Council on wages and other substantive issues designed to replace or amend the remuneration and/or other substantive provisions of this part of the Agreement.
- (3) The reference to negotiations in sub-clause (2) above shall mean negotiations as contemplated in sub-clause (1) above.
- (4) Section 65(3) of the Act shall not render industrial action contemplated in sub-clause (2) above unprocedural.

41. ATYPICAL WORK, OUTSOURCING AND SUBCONTRACTING

- (1) The Council shall conduct a survey on the extent and type of contract work in the clothing industry.
- (2) Every employer shall complete a questionnaire as approved by the Council.
- (3) All employers shall be required to co-operate with the survey.

42. PROVIDENT FUND CONTRIBUTIONS

- (1) Employees' contributions: Every employer shall, each week or each month, as the case may be, deduct from the wages of each of his weekly paid or monthly paid employees, in respect of whom wages are prescribed in this part of the Agreement, and who has worked 9 ordinary hours or more during any pay week, an amount of equal to 4,0% of his wages towards a provident fund or a retirement fund administered by the Council, provided this is confirmed in a plant level ballot by the majority of employees.

No deductions shall be made from the wages of an employee who is 65 years of age or older.

- (2) Employers' contributions: An employer shall each week, in the case of weekly paid employees or each month, in the case of monthly paid employees, contribute an amount equal to 4,0% of the wage of each of his employees. In respect of whom wages are prescribed in this Agreement and who has worked 9 ordinary hours or more during any pay week, towards a provident fund or retirement fund administered by the Council.
- (3) The total deducted in terms of subclause (1) above, together with the employer's contributions in terms of subclause (2) above, shall be forwarded together with a list showing Council registration numbers of employees detailing particulars of contributions, to the General Secretary of the Council, or Regional Secretary of the Regional Chamber of this Council in whose area of responsibility the employer's business falls to reach him no later than 14 days after the end of each calendar month.

43. INDUSTRY PROTECTION FUND

Contained in Annexure C.

44. HIV/AIDS

The Code of Good Practice on Key Aspects of HIV/AIDS and Employment as set out in Annexure A to this agreement shall be policy in the industry.

World International HIV/AIDS Day

The industry acknowledges the importance of creating awareness of the HIV/AIDS pandemic. To this end, employers are encouraged to grant employees on World International HIV/AIDS Day thirty minutes paid time off to participate in awareness activities agreed to at industry level.

45. CONTRACT EMPLOYEES

Contained in Annexure D.

46. CLOSED SHOP

No employer shall continue to employ an employee:

- (1) Who, while being eligible for membership of the union, is not a member of the trade union as at the date of coming into operation of this part of the agreement, or

- (2) Who does not become a member of the trade union within a period of 90 days from such date
- (3) The provisions of this clause shall apply to persons who are eligible for union membership in terms of the constitution of the trade union
- (4) For this section of the agreement, no union membership fees accruing from the close shop provision may be:
 - (a) Paid to a political party as an affiliation fee;
 - (b) Contributed in cash or kind to a political party or a person standing for election to any political office or
 - (c) Used for any expenditure which does not advance or protect the socio-economic interests of employees.
- (5) The provisions of section 26(3)(c) and 26(4) of the Labour Relations Act shall be observed by the parties to the Council and to whom this clause is applicable.

47. WORKING IN ARRANGEMENTS

Employees shall be permitted to work in the time lost due to strike action incurred during the September / October 2009 protected wage strike at normal rates of pay, provided that this is agreed to at plant level and further provided that where agreed, such employees shall be offered a loan equal to between one week and two weeks' wages, deductible from their wages in equal weekly amounts over a 10 week period.

ANNEXURE A**CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS
AND EMPLOYMENT WITHIN THE CLOTHING MANUFACTURING
INDUSTRY OF SOUTH AFRICA****1. INTRODUCTION**

- 1.1. The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems, which have socio economic, employment and human rights implications.
- 1.2. It is recognised that the HIV/AIDS epidemic will affect every workplace, with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- 1.3. HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- 1.4. Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.
- 1.5. One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6. Furthermore the Code seeks to assist with the attainment of the broader goals of:
 - eliminating unfair discrimination in the workplace based on HIV status;
 - promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection;
 - promoting appropriate and effective ways of managing HIV in the workplace;
 - creating a balance between the rights and responsibilities of all parties.

2. OBJECTIVES

- 2.1. The Code's primary objective is to set out a policy for employers and the trade union within the clothing manufacturing industry to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
 - (i) creating a non-discriminatory work environment;
 - (ii) dealing with HIV testing, confidentiality and disclosure;
 - (iii) providing equitable employee benefits;
 - (iv) dealing with dismissals; and

- (v) managing grievance procedures.
- 2.2. The Code's secondary objective is to provide a policy for employers, employees and the trade union within the clothing manufacturing industry on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1., on the following:
- (i) creating a safe working environment for all employers and employees;
 - (ii) developing procedures to manage occupational incidents and claims for compensation;
 - (iii) introducing measures to prevent the spread of HIV;
 - (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace; and
 - (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:
- (i) between employers, employees and the trade union in the workplace; and
 - (ii) between the workplace and other stakeholders at a sectoral, local, provincial and national level.

3. POLICY PRINCIPLES

- 3.1. The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2. The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3. The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4. HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5. Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

4. APPLICATION AND SCOPE

- 4.1. All employers and employees within the clothing manufacturing industry, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2. For the purposes of this code, the term "workplace" should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.
- 4.3. This Code, however, does not impose any legal obligation in addition to those in the Employment Equity Act, the Labour Relations Act and this code, or in any other legislation referred to in the Code.

- 4.4. The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

5. LEGAL FRAMEWORK

- 5.1. The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant Legislation which includes the following:

- (i) Employment Equity Act, No. 55 of 1998;
- (ii) Labour Relations Act, No. 66 of 1995;
- (iii) Occupational Health and Safety Act, No. 85 of 1993;
- (iv) Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
- (v) Basic Conditions of Employment Act, No. 75 of 1997; and
- (vi) Medical Schemes Act, No. 131 of 1998.
- (vii) Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.

- 5.2. The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.

- 5.3. The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.

5.3.1. The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.

5.3.2. Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.

5.3.3. No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.

5.3.4. In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).

5.3.5. In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.

5.3.6. An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section

22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.

- 5.3.7. In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].
- 5.3.8. In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their "state of health". Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.9. In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

6. PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT

- 6.1. No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:

- (i) recruitment procedures, advertising and selection criteria;
- (ii) appointments, and the appointment process, including job placement;
- (iii) job classification or grading;
- (iv) remuneration, employment benefits and terms and conditions of employment;
- (v) employee assistance programmes;
- (vi) job assignments;
- (ix) training and development;
- (x) performance evaluation systems;
- (xi) promotion, transfer and demotion;
- (xiii) termination of services.

- 6.2. To promote a non-discriminatory work environment based on the principle of equality, employers and the trade union should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:

- (i) preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace;
- (ii) awareness, education and training on the rights of all persons with regard to HIV and AIDS;
- (iii) mechanisms to promote acceptance and openness around HIV/AIDS in the workplace;
- (iv) providing support for all employees infected or affected by HIV and AIDS; and
- (v) grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

7. HIV TESTING, CONFIDENTIALITY AND DISCLOSURE

7.1. HIV Testing

- 7.1.1. No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As

provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

7.1.2. Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts. ^{1[1]}

7.1.3. In implementing the sections below, it is recommended that parties take note of the position set out in item

7.1.4. Authorised testing

Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:

- (i) during an application for employment;
- (ii) as a condition of employment;
- (iii) during procedures related to termination of employment;
- (iv) as an eligibility requirement for training or staff development programmes; and
- (v) as an access requirement to obtain employee benefits.

7.1.5. Permissible testing

(a) An employer may provide testing to an employee who has requested a test in the following circumstances:

- (i) As part of a health care service provided in the workplace;
- (ii) In the event of an occupational accident carrying a risk of exposure to blood or other body fluids;
- (iii) For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.

(b) Furthermore, such testing may only take place within the following defined conditions:

- (i) At the initiative of an employee;
- (ii) Within a health care worker and employee-patient relationship;
- (iii) With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV; and
- (iv) With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.

7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.

7.1.7. Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is

^{1[1]} The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the National Bargaining Council for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.

necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

- 7.1.8. Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research.^{2[2]} Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

7.2. Confidentiality and Disclosure

- 7.2.1. All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.
- 7.2.2. Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.
- 7.2.3. Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:
- (i) encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes;
 - (ii) encouraging the development of support groups for employees living with HIV or AIDS; and
 - (iii) ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

8. PROMOTING A SAFE WORKPLACE

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and that its policy deals with, amongst others:
- (i) the risk, if any, of occupational transmission within the particular workplace;
 - (ii) appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace;
 - (iii) providing appropriate equipment and materials to protect employees from the risk of exposure to HIV;
 - (iv) the steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis;
 - (v) the procedures to be followed in applying for compensation for occupational infection;
 - (vi) the reporting of all occupational accidents; and

^{2[2]} See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.

- (vii) adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

9. COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV

- 9.1. An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- (i) providing information to affected employees on the procedures that will need to be followed in order to qualify for a compensation claim; and
 - (ii) assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.
- 9.2. Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

10. EMPLOYEE BENEFITS

- 10.1. Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits
- 10.2. Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3. Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4. Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

11. DISMISSAL

- 11.1. Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2. Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.
- 11.3. The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

12. GRIEVANCE PROCEDURES

- 12.1. Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.

- 12.2. Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.
- 12.3. Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

13. MANAGEMENT OF HIV IN THE WORKPLACE

- 13.1. The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:
 - 13.1.1. An understanding and assessment of the impact of HIV/AIDS on the workplace; and
 - 13.1.2. Long and short term measures to deal with and reduce this impact, including:
 - (i) An HIV/AIDS Policy for the workplace
 - (ii) HIV/AIDS Programmes, which would incorporate:
 - (a) Ongoing sustained prevention of the spread of HIV among employees and their communities;
 - (b) Management of employees with HIV so that they are able to work productively for as long as possible; and
 - (c) Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

14. ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE

- 14.1. Employers and the trade union should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.
- 14.2. Broadly, impact assessments should include:
 - (i) Risk profiles; and
 - (ii) Assessment of the direct and indirect costs of HIV/AIDS;
- 14.3. Risk profiles may include an assessment of the following:
 - (i) The vulnerability of individual employees or categories of employees to HIV infection;
 - (ii) The nature and operations of the organisation and how these may increase susceptibility to HIV infection (e.g. migrancy or hostel dwellings);
 - (iii) A profile of the communities from which the organisation draws its employees;
 - (iv) A profile of the communities surrounding the organisation's place of operation; and
 - (v) An assessment of the impact of HIV/AIDS upon their target markets and client base.
- 14.4. The assessments should also consider the impact that the HIV/AIDS epidemic may have on:
 - (i) Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme;
 - (ii) Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption;

- 14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment

15. MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE

15.1. A Workplace HIV/AIDS Policy

- 15.1.1. Every workplace should develop an HIV/AIDS policy^{3[3]}, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:

- (i) the organisation's position on HIV/AIDS;
- (ii) an outline of the HIV/AIDS programme;
- (iii) details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal);
- (iv) express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards;
- (v) grievance procedures in line with item 12 of this Code;
- (vi) set out the means of communication within the organisation on HIV/AIDS issues;
- (vii) details of employee assistance available to persons affected by HIV/AIDS;
- (viii) details of implementation and coordination responsibilities; and
- (ix) monitoring and evaluation mechanisms.

- 15.1.2. All policies should be developed in consultation with key stakeholders within the workplace including the trade union, employee representatives, occupational health staff and the human resources department.

- 15.1.3. The policy should reflect the nature and needs of the particular workplace.

- 15.1.4. Policy development and implementation is a dynamic process, so the workplace policy should be:

- (i) communicated to all concerned;
- (ii) routinely reviewed in light of epidemiological and scientific information; and
- (iii) monitored for its successful implementation and evaluated for its effectiveness.

15.2. Developing Workplace HIV/AIDS Programmes

- 15.2.1. It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

- 15.2.2. The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:

- (i) hold regular HIV/AIDS awareness programmes;
- (ii) encourage voluntary testing;

^{3[3]} This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.

- (iii) conduct education and training on HIV/AIDS;
- (iv) promote condom distribution and use;
- (v) encourage health seeking behaviour for STD's;
- (vi) enforce the use of universal infection control measures;
- (vii) create an environment that is conducive to openness, disclosure and acceptance amongst all staff;
- (viii) endeavour to establish a wellness programme for employees affected by HIV/AIDS;
- (ix) provide access to counselling and other forms of social support for people affected by HIV/AIDS;
- (x) maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation;
- (xi) develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4
- (xii) regularly monitor, evaluate and review the programme.

15.2.3. Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

16. INFORMATION AND EDUCATION

- 16.1. The National Bargaining Council should ensure that copies of this code are available and accessible.
- 16.2. Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3. The trade union should include the Code in their education and training programmes of shop stewards and employees.

GLOSSARY

<i>Affected employee</i>	an employee who is affected in any way by HIV/AIDS e.g. if they have a partner or a family member who is HIV positive
<i>AIDS</i>	AIDS is the acronym for "acquired immune deficiency syndrome". AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.
<i>Epidemiological</i>	The study of disease patterns, causes, distribution and mechanisms of control in society.
<i>HIV</i>	HIV is the acronym for "human immuno deficiency virus". HIV is a virus which attacks and may ultimately destroy the body's natural immune system.
<i>HIV testing</i>	taking a medical test to determine a person's HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of 'risk behaviour' (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee's or job applicant's HIV status.
<i>HIV positive</i>	having tested positive for HIV infection.
<i>Infected employee</i>	an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.
<i>Informed consent</i>	a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.
<i>Policy</i>	a document setting out an organisation's position on a particular issue.
<i>Pre and post test counselling</i>	a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.
<i>Reasonable Accommodation</i>	means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.
<i>STDs</i>	acronym for "sexually transmitted diseases". These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.
<i>Surveillance Testing</i>	This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.

ANNEXURE C**INDUSTRY PROTECTION FUND**

- (1) In terms of section 28 (1) (g) of the Act, read with clause 3.6 and 3.7 of the Council's Constitution, a fund to protect the fashion industry from further job losses and decline, which shall be known as the Fashion Industry Protection Fund (hereinafter referred to as "the Fund") is hereby established.
- (2) The objects of the Fund shall be to provide financial support to campaigns and programmes engaged in by the parties to the Bargaining Council, where such programmes are aimed at protecting the Industry in the respective Region.
- (3) The Fund shall commence on such date as decided by the parties to the Regional Council and shall continue to operate until such date as the Regional Chamber and the parties thereto may decide.
- (4) Every employer shall, each week, deduct from the wages of each of his employees for whom wages are prescribed in this part of the Agreement, an amount of 10 cents.
- (5) An employer shall, in respect of each employee from whose wages deductions are made in terms of sub-clause (4) above, contribute an amount of 13 cents per week.
- (6) The total sum representing the employer's contributions and the employees' contributions shall be forwarded monthly by the employer to the Regional Secretary of the Regional Chamber, by not later than the payment date specified in the relevant part of the Agreement and in the form and manner specified in relevant clause of each part of the Agreement.
- (7) The moneys collected by the Regional Chamber shall be paid monthly by the Regional Chamber into a bank account styled "Fashion Industry Protection Fund" opened by the Regional Chamber of the Bargaining Council for the purpose of receiving these funds and for disbursing them for the purpose for which they are intended.
- (8) The moneys collected shall be used by the Regional Chamber to finance the following bona fide strategies in pursuit of the objects of the Fund as set out in sub-clause (2), and including
 - (a) "Buy Local" campaigns;
 - (b) Combating customs fraud and illegal imports; or
 - (c) for such other strategies as meet the objectives of the Fund.
- (9) During the period of operation of the Fund, should the Southern African Clothing & Textile Workers' Union (SACTWU) and/or the Regional Employers' Associations who are members of the Bargaining Council become or wish to become engaged in additional strategies or bona fide activities in pursuit of the objectives of the Fund other than those specified in sub-clause (8), they may apply in writing to the Regional Chamber for the activities in question to be recognised by the Regional Chamber as an authorised strategy or activity which can be financed in terms of the Fund's provisions. The decision as to whether to recognise the strategy or activity in question shall be at the sole discretion of the Regional Chamber and shall be recorded as a resolution of the Regional Chamber.

- (10) The Fund's moneys shall be used to meet all reasonable expenses incurred in pursuit of the authorised activities in regard to the strategies referred to above and may not be used for any unauthorised purpose or activity.
- (11) If SACTWU or the Regional Employers' Association is in doubt about whether contemplated expenditure of the Fund's moneys qualifies as expenditure on an authorised activity, SACTWU or the Regional Employers' Association, as the case may be, may request confirmation in advance from the Regional Chamber in this regard.
- (12) No moneys of the Fund shall be disbursed by the Regional Chamber until the Fund has been established by this part of the Agreement and SACTWU, the Regional Employers' Association and the Regional Chamber have signed a written agreement.
- (13) Any interest that is earned on Fund moneys at any time shall be used for the benefit of the activities and purposes authorised in terms of the Fund.
- (14) SACTWU and the Regional Employers' Association shall, as the need arises, provide the Regional Chamber with a financial plan of how the funds will be utilised towards achieving the objectives of the Fund. The plan shall be submitted to the Regional Chamber for approval.
- (15) Expenditure incurred by the parties shall be paid by the Fund against invoices or vouchers submitted to the Regional Secretary of the Regional Chamber, provided he or she is satisfied that the expenditure-
 - (a) is in terms of the approved plan;
 - (b) is clearly classified by strategy, activity and the nature of the expense; and
 - (c) has been authorised by the Regional Secretary or National Secretary of SACTWU, or the Executive Director of the Regional Employers' Association.

Should the Regional Secretary of the Regional Chamber deem it necessary, such approved expenditure shall be presented to the Regional Chamber for approval prior to payment.
- (16) Any expenses that have been incurred by SACTWU or the Regional Employers' Association for unauthorised purposes or activities and which have been paid or reimbursed to SACTWU or the Regional Employers' Association, may be recovered by the Regional Chamber from SACTWU or the Regional Employers' Association, as the case may be.
- (17) The Regional Secretary of the Regional Chamber shall be obliged to account to the Regional Chamber every two months in relation to income and expenditure of the Fund. This accounting to the Regional Chamber shall include, but not be limited to, providing a schedule summarising the expenses incurred on authorised activities in pursuance of the objects of the Fund and in respect of which payment is claimed.
- (18) SACTWU and the Regional Employers' Association shall be obliged to report back to the Regional Chamber every two months after the establishment of the Fund on the activities undertaken by their organisation in pursuance of the objects of the Fund and for which funds have been disbursed.
- (19) In the event that there is a disagreement between the parties as to whether any activity or expenditure or proposed activity or expenditure falls within the objects of the Fund, either party may refer a dispute in this regard for conciliation in terms of clause 15.5 of the Council's Constitution and, if it remains unresolved after conciliation, the proposing party may request the Regional Chamber in writing that the

dispute be resolved through arbitration in accordance with clause 15.4.2.1.2 of the Council's Constitution.

- (20) Each party to this part of the Agreement has a pre-emptive right to require all undertakings or commitments between the parties, not only those referred to in this resolution, to be reduced to writing.

ANNEXURE D**CONTRACT EMPLOYEES**

- (1) Those contract employees with 12 months' or more employment with the same employer shall be converted into permanent employees.
 - (2) All contract employees shall be entitled to receive a pro-rata share of all statutory payments due to permanent employees.
 - (3) All contract employees who are in employ as at the end of November each year shall be entitled to full payment for all public holidays which fall during the annual shutdown period.
 - (4) Employees who have completed a learnership shall not be placed on a further contract period after the completion of such a learnership, but shall be employed as a permanent fulltime employee.
 - (5) Where there are more beneficial arrangements (other than those set out in sub-clauses (1) to (4) above) governing the employment of contract workers, such provisions shall remain effective.
-

NOTICE – CHANGE OF TELEPHONE NUMBERS: GOVERNMENT PRINTING WORKS

As the mandated government security printer, providing world class security products and services, Government Printing Works has adopted some of the highly innovative technologies to best serve its customers and stakeholders. In line with this task, Government Printing Works has implemented a new telephony system to ensure most effective communication and accessibility. As a result of this development, our telephone numbers will change with effect from 3 February 2014, starting with the Pretoria offices.

The new numbers are as follows:

- Switchboard : 012 748 6001/6002
- Advertising : 012 748 6205/6206/6207/6208/6209/6210/6211/6212
- Publications Enquiries : 012 748 6052/6053/6058 GeneralEnquiries@gpw.gov.za
 - Maps : 012 748 6061/6065 BookShop@gpw.gov.za
 - Debtors : 012 748 6060/6056/6064 PublicationsDebtors@gpw.gov.za
 - Subscription : 012 748 6054/6055/6057 Subscriptions@gpw.gov.za
- SCM : 012 748 6380/6373/6218
- Debtors : 012 748 6236/6242
- Creditors : 012 748 6246/6274

Please consult our website at www.gpwonline.co.za for more contact details.

The numbers for our provincial offices in Polokwane, East London and Mmabatho will not change at this stage.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 748 6052, 748 6053, 748 6058

Advertisements: Tel: (012) 748 6205, 748 6208, 748 6209, 748 6210, 748 6211

Subscriptions: Tel: (012) 748 6054, 748 6055, 748 6057

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

Publikasies: Tel: (012) 748 6052, 748 6053, 748 6058

Advertensies: Tel: (012) 748 6205, 748 6208, 748 6209, 748 6210, 748 6211

Subskripsies: Tel: (012) 748 6054, 748 6055, 748 6057